TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 230.

THE SOUTHWESTERN COAL AND IMPROVEMENT COMPANY ET AL., APPELLANTS,

vs.

HYRAM Y. McBRIDE AND J. H. RANDELL, AS ADMINISTRATOR OF THE ESTATE OF G. G. RANDELL, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 17, 1901.

(18,023.)

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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit: on the seventeenth day of January, A. D. 1900, a transcript of record was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, pursuant to an appeal allowed by the United States court of appeals in the Indian Territory, in a case wherein Southwestern Coal and Improvement Company and others were appellants, and Hyram Y. McBride and others were appellees, which said transcript of record is in the words and figures following, to wit:

1 UNITED STATES OF AMERICA, *Indian Territory,* } *ss*:

In the Court of Appeals.

Pleas and proceedings in the United States court of appeals in the Indian Territory, at the city of South McAlester, before the Honorable William H. H. Clayton, chief justice, and the Honorable John R. Thomas, Hosea Townsend, and Joseph A. Gill, associate justices.

WM. P. FREEMAN, *Clerk.*

SOUTHWESTERN COAL & IMPROVEMENT CO., Appellant,
versus
HYRAM Y. MCBRIDE ET AL., Appellees.

Be it remembered, that on the eighth day of June, A. D. 1899, there was filed in the office of the clerk of the United States court of appeals in the Indian Territory, at South McAlester, a transcript of the record of the United States court for the central district at Atoka, in the above-entitled cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Indian Territory, Central District.* }

Pleas in the United States court at Atoka for the central district of the Indian Territory in the cause numbered 332 on the chancery docket and entitled H. Y. McBride, plaintiff, *vs.* J. H. Randell, adm'r;

National Bank of Denison, and Southwestern Coal & Improvement Co., defendants. Presiding, Wm. H. H. Clayton, judge.

E. J. FANNIN, *Clerk.*

On the 14th day of May, 1898, there was filed in the office of the clerk of the United States court at Atoka for the central district of the Indian Territory, the plaintiff's complaint in equity, which complaint is in words and figures as follows, to wit:

In United States Court for Indian Territory, Central Judicial District, Sitting at Atoka.

HYRAM Y. MCBRIDE, Plaintiff, *vs.* THE NATIONAL BANK OF DENISON, THE SOUTHWESTERN COAL & IMPROVEMENT CO., and J. H. RANDELL, Administrator of Estate of G. G. Randell, Deceased, Defendants.	Complaint in Equity.

Comes now the plaintiff, Hyram Y. McBride, a citizen of the
2 Choctaw nation and a resident of the southern judicial district of the Indian Territory, and brings this his action against the National Bank of Denison, a corporation doing business in the city of Denison, State of Texas, the Southwestern Coal & Improvement Co., a corporation doing business in the town of Coalgate, with an office and an agent at said town of Coalgate in the central judicial district of the Indian Territory and J. H. Randell as administrator of G. G. Randell, deceased, duly appointed such administrator on the — day of —— 189–, and who is a resident of the State of Texas, and says:

That on the 6th day of April, 1894, plaintiff was indebted to the def't, The National Bank of Denison, in the sum of five thousand dollars ($5,000.00), for which sum he executed his promissory note to become due and payable six months after date, or on the 6th day of Oct., 1894, said note to bear interest from and after maturity at the rate of ten per cent. per annum, which note was signed by Walter Colbert as surety and endorsed by G. G. Randell; and to better secure the payment of said note your orator executed a mortgage on a certain coal or mining interest situated in the town of Coalgate, Ind. Ter., within the central judicial district of the Indian Territory and the Atoka division thereof, which coal claim was being operated by the Southwestern Coal & Improvement Company and is now being operated by said company, which interest as represented by said mortgage consisted of three-twenty-seconds of the entire royalty which was to accrue on coal mined by the said Southwestern Coal & Improvement Co., under its contracts for operating coal mines in the town of Coalgate, I. T., in which your orator was interested. A copy of said mortgage is hereto attached and made a part hereof and marked Exhibit "A." That according to the terms of said mortgage the said coal interest so mortgaged could be sold to the highest bidder for cash after giving ten days'

notice in writing posted in three public places, said sale to be made before the court-house door of Grayson county, State of Texas, in default of the payment of said sum of five thousand dollars, and that said National Bank of Denison was authorized to make the purchaser a warranty deed to said coal claim so mortgaged. That said coal claim so mortgaged was of great value and was worth the sum of seven thousand dollars, the royalties or profits arising to the interest of this plaintiff averaging about $200 per month, and that the profit arising from said coal interest has long since discharged the said indebtedness of $5,000 and interest thereon at ten per cent. That said national bank and said G. G. Randell frandulently conspired to cheat and defraud your orator, and pursuant to said conspiracy the said G. G. Randell was authorized by said bank to sell said interest so mortgaged, and under said appointment as the
3 agent of said bank pretended to make a sale of said interest so mortgaged, and claimed to be the highest, last and best bidder, at his own sale, at and for the sum of $275, which sum your orator was informed was placed as a credit on said note, together with the royalty accrued up to the date of said alleged sale making the sum about $600. That during this time there was a strike in the mining camps of Coalgate and during the months of April, May and June and July, 1894, said coal interest only paid the sum of $18.77, because of said strike, and that with this exception the average royalty paid on said interest was not less than $200 per month. That thereafter, to wit, in the month of February, 1897, there remained due on said note, as your orator is informed and verily believes, the sum of $325.09 or thereabouts, inclusive of interest on the said $5,000 mortgaged, and that the sum of $2,000 or more has accrued on said interest to this date since the said date of Feb'y, 1897, and is now withheld by the said Southwestern Coal & Improvement Company because of the claim asserted to said coal interest by the other defendants herein.

Your orator further complaining, says that no notice was ever given to him or his surety, Walter Colbert, of said sale, and that in making said sale, if any was made, which is denied by your orator, no appraisement of the mortgaged property was had or made, that the consideration of $275 alleged to be the proceeds of said sale, is totally and wholly inadequate and unconscionable, and such a price as in equity and good morals should not be allowed to stand; that said sale, if made at all, was not lawful nor according to the terms of said mortgage; that the said interest, at the time of said pretended sale was worth $7,000, and that said national bank undertook to give its agent G. G. Randell a warranty deed to said property for the sum of $275; that said coal interest was situated in the Indian Territory, and that the contract by which your orator was entitled to said royalty was made and was to be performed in said Ind. Ter., and that your orator was unwilling, had he been notified, to have permitted said coal interest to have been sold in the State of Texas without notifying citizens of the Ind. Ter. who were entitled to purchase and own the same.

Further complaining your orator says that the note executed by

him for $5,000 as aforesaid was turned over to said G. G. Randell with the understanding that the remainder of said note, which amounted to about $4,400, was to be paid by the royalty due and arising from the monthly payment of said coal interest originally mortgaged to said national bank by your orator. That no additional payments were made by the said Randell who claimed
4 to have purchased the same at his own sale, as aforesaid, and your orator believes and alleges the facts to be, that the only change made in the arrangements was that said indebtedness was changed from the account of McBride to said Randell and Randell after purchasing or pretending to purchase said interest, left it in the hands or possession of said national bank, which delivered over the note of your orator to said G. G. Randell who borrowed other moneys on the same, and that no decrease in the amount of said indebtedness was brought about by said pretended sale, except that the sum of $275 was credited on said note. Your orator further shows that a short time subsequent to said pretended sale he was informed by G. G. Randell that said sale had been made and that he, the said Randell, had purchased the same in order to protect the interest of your orator, and that he, the said Randell, would reconvey said interest to your orator as soon as he returned to his office in the State of Texas, and that your orator relied implicitly on the statements of said Randell, who had always acted as his attorney and agent in such matters, and was in fact, the attorney of your orator at the time of said sale; and that said Randell assured your orator that in making said purchase of your orator's coal interest he had acted in the matter solely with the view to protecting the interest of your orator and that no change would be necessary, except a reconveyance to your orator of the coal interest sold as herein stated, provided said coal interest so mortgaged to the said National Bank of Denison should remain in the possession of said bank as collateral security for the payment of said sum of $5,000, or so much of the same as might still be due and unpaid to which your orator readily assented.

Further complaining of the defendants, The National Bank of Denison and J. H. Randell, administrator, your orator says that they now are claiming title to said coal interest by reason of said illegal and void sale and pretended warranty deed executed by said bank to G. G. Randell in the purchase of same while acting as the agent of said bank, and thereby rendering it impossible for your orator to effect a settlement with the said Southwestern Coal & Improvement Co. which your orator has reason to believe is withholding a large sum of money now due him, and which as your orator believes is acting and conniving with the said national bank and J. H. Randell to carry out the unlawful claim to said property mortgaged and sold as hereinbefore stated.

Your orator further says that he is willing and ready to pay to said national bank the said sum of $325 or whatever sum may be due and unpaid on said note and the mortgage herein described with interest thereon and is willing and ready to do equity in
5 the premises toward said bank, that he does not claim credit for the sum of $275 for which the said coal interest is alleged

to have been sold and after deducting this, he prays that such a sum as may be found due him on an accounting be decreed to him; and therefore prays that the said property be redeemed and restored to your orator, that the said warranty deed held by said estate of G. G. Randell through its administrator, J. H. Randell, be cancelled and held for naught, and that the said defendant, The Southwestern Coal and Improvement Company be required to account for all royalties, and all amounts due as royalty on said coal claim or interest on same, and that the said National Bank of Denison be required to make an accounting of the royalties collected by it of the lessors of said coal interest for the entire time it has been so mortgaged, and that said J. H. Randell be required to account for all moneys which have been received, and your orator further prays that he be restored to all his legal and equitable rights and privileges in this cause pertaining, and that he have such relief as may appear to this honorable court to be proper in the premises.

H. Y. McBRIDE,
By His Att'ys.

H. Y. McBride says on oath that the matters and facts set out in the above and foregoing complaint are true to his personal knowledge.

—— ——.

Sworn to and subscribed before me this — day of May, 1898.

—— ——,
Notary Public.

EXHIBIT "A."

STATE OF TEXAS, }
Grayson County. }

Know all men by these presents, that I, H. Y. McBride of Atoka, Ind. Ter., have this day for value received, paid me by the National Bank of Denison, Texas, sold, assigned and transferred to said bank all the royalties due and to become due to me from the Southwestern Coal & Improvement Company, a corporation doing business at Coalgate in the Ind. Ter. for coal mined by said S. W. C. & I. Co. in Atoka county, C. N., under certain contracts and all contracts with said company in which I have any interest. My interest in said contracts is one and one-half shares or interests in said royalties and leases assigned, said shares being one-eleventh and one twenty-second of all royalties paid by said S. W. C. & Imp. Co. for the mines aforesaid.

6 The Southwestern Coal & Imp. Co. is authorized and instructed to pay all said royalties now due, or to become due to me, to the National Bank of Denison, Texas.

This transfer is made to secure the National Bank of Denison in the payment of a certain promissory note of even date herewith for the sum of five thousand dollars, payable six months after date, with interest at the rate of ten per cent. per annum from maturity until paid, and if said note be not paid at maturity and placed in the hands of an attorney, then the parties thereto agree to pay ten per

cent. additional on principal and interest due for attorneys' fees; said note is signed by H. Y. McBride and W. Colbert and is endorsed by G. G. Randell.

That all royalties paid by said company to said bank under this transfer are to be credited on said note. That if said note is not paid when due, then the said bank is authorized to sell the interests in royalties herein conveyed to the highest bidder for cash, after giving ten days' notice in writing, posted up in three public places in Grayson county, Texas, said sale to be made at the court-house door of Grayson county, between the hours of ten o'clock a. m. and four o'clock p. m. on the first Tuesday in the month, and the amount received, after paying the costs of sale, is to be credited on said note. Said sale, if made, will convey to the purchaser all interest that I own in said shares and all royalties in said mines forever.

Said bank is authorized to make a valid warranty deed to said property to the purchaser in case of sale. If said note is paid when due then this conveyance is null and void, otherwise of full force and effect.

Witness my hand this 6th day of April, 1894.

(Signed) H. Y. McBRIDE.

STATE OF TEXAS, }
Grayson County. }

Before me, the undersigned authority, personally appeared H. Y. McBride to me well known, who acknowledged that he signed the above and foregoing instrument for the purposes and consideration therein expressed.

In testimony whereof witness my hand and official seal this the 6th day of April, A. D. 1894.

(Signed) J. H. RANDELL,
[NOTARY SEAL.] *Notary Public, Grayson County, Texas.*

Indorsed: Hyram J. McBride *vs.* National Bank of Denison *et al.* Complaint in equity. Filed May 14th, 1898. E. J. Fannin, clerk. By D. N. Robb, deputy.

7 Whereupon, on the same day there was issued summons to the said defendants.

Thereafterwards, to wit, on the 11th day of November, 1898, among the proceedings had were the following, to wit:

5th Day, Wednesday, Nov. 11th, 1898, November Term, 1898.

Court met pursuant to adjournment.
Present and presiding as of other days.
Whereupon the following proceedings were had, to wit:

H. Y. McBRIDE
vs.
NATIONAL BANK OF DENISON ET AL. } 332.

Comes the defendant, The Southwestern Coal and Improvement Co. *and files a demurrer to plaintiff's complaint.*

Whereupon court arose, etc.

WM. H. H. CLAYTON, *Judge.*

Which demurrer is in words and figures as follows, to wit:

In the United States Court for the Indian Territory, Central Judicial District at Atoka, I. T.

H. Y. McBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON, THE SOUTHwestern Coal and Improvement Company, and J. H. Randell, Administrator of the Estate of G. G. Randell, Deceased, Defendants. } Court No., 332. Demurrer.

Now at this day comes the above-named defendant, The Southwestern Coal & Improvement Company, and demurs to the plaintiff's complaint in this cause and for grounds of such demurrer states that the complaint does not state facts sufficient to constitute a cause of action.

CLIFFORD L. JACKSON,
J. G. RALLS,
Attorneys for the Defendant The Southwestern Coal & Improvement Company.

Indorsed: Court No. 332. H. Y. McBride, plaintiff, *vs.* National Bank of Denison *et al.*, defendants. Demurrer of the Southwestern Coal and Improvement Company. Filed in open court this 11th (—) 1898. E. J. Fannin, clerk. Clifford L. Jackson and J. G. Ralls, attorneys for defendant Southwestern Coal and Improvement Company.

Thereafterwards, to wit, on the 17th day of March, 1899, defendant J. H. Randell filed his separate answer, which is in words and figures as follows, to wit:

8 In the United States Court for the Central District of the Indian Territory, Sitting at Atoka.

HYRAM Y. McBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON ET AL., Defendants. } Answer of J. H. Randell.

Now comes J. H. Randell, administrator of the estate of G. G. Randell, deceased, one of the defendants in the above-entitled cause, and demurs to plaintiff's complaint, and says that the same is in-

sufficient in law and presents no ground of equitable relief, and of this he prays the judgment of the court.

But answering, said defendant says:

1.

That his intestate, G. G. Randell, endorsed the note mentioned in plaintiff's complaint without consideration and for the accommodation of said plaintiff. Defendant says that it is true that a mortgage was given by plaintiff, of which the exhibit marked "A" is a copy. Defendant denies that the coal claim covered by said mortgage was of the value of seven thousand dollars, and that the royalties or profits of plaintiff arising therefrom amounted to two hundred dollars per month, and that said royalties have long since discharged said indebtedness of five thousand dollars, with interest thereon at ten per cent. He denies that said national bank and G. G. Randell fraudulently conspired to cheat and defraud plaintiff and that in pursuance of said conspiracy the said G. G. Randell was authorized by said bank to sell said interest, and that as agent of said bank he made a pretended sale of said interest and became a buyer at his own sale for the sum of two hundred and seventy-five dollars. He denies that the same was placed as a credit on the note together with royalties accrued up to the date of said sale, and that the same amounted to about the sum of six hundred dollars. He denies that there remained in the month of February, 1897, due on said note the sum of three hundred and twenty-five dollars and nine cents or thereabouts, and that the sum of two thousand dollars or more has accrued on said interest since the said date of February, 1897, and is now withheld by the Southwestern Coal & Improvement Company. Defendant denies that no notice was given the plaintiff or his surety, Walter Colbert, of the sale of said coal interest, and that no appraisement of said mortgaged property was had or made, and denies that the consideration paid at said sale was inadequate or unconscionable. He denies that said sale was not lawful or according to the terms of the mortgage. Defendant denies that the said national bank gave to G. G. Randell a warranty deed to said
9 property for the sum of two hundred and seventy-five dollars. He denies that the contract aforesaid was made and to be performed in the Indian Territory. He denies that the note executed as aforesaid was turned over to G. G. Randell with the understanding that the remainder of the note was to be paid by the royalty due and arising from the monthly payments of said coal interest mortgaged. Defendant denies that no additional payments were made by said G. G. Randell. He denies that no change in the relations of Randell and in the arrangement of the parties was made after such sale. He denies that after such sale G. G. Randell stated to plaintiff that he had purchased said coal mining interest in order to protect plaintiff, and that he would reconvey said interest to plaintiff at any time. He denies that G. G. Randell was the attorney of the plaintiff in this transaction at this time. He denies that the said Randell assured plaintiff that in making the purchase of said coal interest he, Randell, had acted solely with a view to protecting

the interests of the plaintiff, and he denies the other allegations as to such conversation. He denies that the National Bank of Denison is now claiming title to said coal interest.

2.

Further answering herein, defendant J. H. Randell as administrator as aforesaid, alleges the fact to be that plaintiff made default in the payment of the note in his complaint mentioned, and that pursuant to the terms of the mortgage in said complaint mentioned the National Bank of Denison advertised the property embraced in said mortgage for sale in the manner provided by said instrument. That it complied with all the prerequisites to such sale in such mortgage provided, and on the first Tuesday in March, 1895, did sell at the court-house door of said county the property and interest aforesaid to G. G. Randell for the sum of three hundred and seventy-five dollars, he being the highest and best bidder for said property. That said sum of $375 was paid by said Randell to said bank which thereupon executed to him a conveyance of the property aforesaid, and by virtue of the sale aforesaid and of the conveyance in pursuance thereof, G. G. Randell, who was a citizen by intermarriage of the Choctaw nation, became the owner of all the right, title and interest of the plaintiff in and to the property in said mortgage described. That the note upon which G. G. Randell was endorser and the mortgage aforesaid were both executed in the State of Texas, where the National Bank of Denison and G. G. Randell had their domicile. That said contract, as evidenced by the note and mortgage, is to be construed and governed by the laws of Texas applicable thereto. That by the laws of said State an appraisement of the mortgaged property was not necessary or required. That the sale under said mortgage was in all respects in conformity with its provisions, was fair and legal, without any circumstances of fraud or concealment, and was valid and effectual under the laws of Texas. That G. G. Randell, in becoming the purchaser at said sale, did not act for plaintiff, but for himself and for his own protection as endorser on the note aforesaid.

3.

That the said G. G. Randell on the — day of ——, 1895, satisfied and paid the note mentioned in plaintiff's complaint, on which plaintiff was principal and the said G. G. Randell endorser, by giving his personal note to said bank for the amount remaining unpaid on the note given by plaintiff as principal as aforesaid. That by virtue of his satisfaction and payment of said note, the said G. G. Randell became subrogated to all the rights of the National Bank of Denison in said note and in the mortgage securing the same as against the principal, the plaintiff herein. That by virtue of such subrogation, the said G. G. Randell and his administrator J. H. Randell became entitled to assert against said plaintiff a claim for the payment of said note, with ten per cent. interest, and ten per cent. of principal and interest as attorneys' fees, for defendant says that the contract for attorneys' fees is valid and lawful under the laws of

Texas, where the contract was executed as aforesaid, and that the conditions upon which said attorneys' fees should become payable have occurred, in this, to wit, that plaintiff did not pay said note upon maturity and the same has been placed in the hands of attorneys for collection.

4.

The defendant J. H. Randell as administrator of the estate of G. G. Randell, further alleges that he is informed and believes and so charges, that the defendant, The Southwestern Coal & Improvement Company owes royalties upon the interest claimed by the plaintiff but now owned by defendant in manner and form as before stated; amounting on the first day of July, 1898, to the sum of $2,617.29. That said royalty, though justly due, has not been paid.

Wherefore, the premises considered, the defendant J. H. Randell prays that his title as administrator of the estate of G. G. Randell, in the property in plaintiff's complaint mentioned, be established; that plaintiff take nothing by this suit, and that he have judgment against the Southwestern Coal & Improvement Company aforesaid for the sum of $2,617.29; but if the court should adjudge that the title to said property is not in the defendant as administrator of G. G. Randell, defendant prays that he have judgment against plaintiff for the amount paid upon the note aforesaid by G. G. Randell, with interest and attorney fees from the date of said payment and that the royalties due from the Southwestern Coal & Improvement Company be applied to the satisfaction of the said indebtedness, and that for the balance remaining of said indebtedness, the court make its proper order foreclosing the mortgage aforesaid, and that it award the defendant all such other and further relief as he may be entitled to in equity under the facts, together with all costs of suit by him incurred.

11

STUART, LEWIS & GORDON,
Attorneys for Defendant.

INDIAN TERRITORY, *Central District,* } ss:

Yancey Lewis, being first duly sworn on his oath states that he is attorney for J. H. Randell, administrator of the estate of G. G. Randell, in the above-entitled cause; that said defendant is not a resident of this jurisdiction and is now without the central district of the Indian Territory; that the statements in the foregoing answer contained are true and correct as he verily believes.

YANCEY LEWIS.

Subscribed and sworn to before me this 16th day of March, 1899.

[SEAL.] BERTHA L. MEDERICK,
Notary Public.

Indorsed: No. 332. Hyram Y. McBride *vs.* National Bank of Denison, *et al.* Answer of J. H. Randell. Filed 3-17-'99. E. J. Fannin, clerk. By D. N. Robb, dep. Stuart, Lewis and Gordon, attorneys for defendant.

Thereafterwards, to wit, on the 23rd day of March, 1899, among the proceedings had were the following, to wit:

MARCH 23RD, 1899.

Thursday, March Term, 1899.

Court met pursuant to adjournment.

Present and presiding: The Hon. Wm. H. H. Clayton, judge.

Whereupon the following proceedings on the equity side of the docket were had, to wit:

H. Y. McBRIDE
vs.
NATIONAL BANK OF DEN. ET AL. } 332.

Now on this day comes on to be heard the demurrer heretofore filed in this cause and the court being well and sufficiently advised in the premises doth overrule the same. Comes then the Southwestern Coal & Improvement Co. and the National Bank of
12 Denison and file their separate answers herein. And on the same day comes H. Y. McBride and J. H. Randell as administrator and file their stipulation and motion for a decree on the plaintiff's pleadings.

Which separate answers are in words and figures as follows, to wit:

In the United States Court for the Indian Territory, Central Judicial District at Atoka, I. T.

HYRAM Y. McBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON, THE SOUTHWESTERN Coal and Improvement Company, and J. H. Randell, Administrator of Estate of G. G. Randell, Deceased, Defendants. } Court No., 332.

Separate answer of the Southwestern Coal and Improvement Company.

Now at this day comes the defendant, The Southwestern Coal and Improvement Company, and for answer to the complaint of the plaintiff in this case, says:

That it admits so far as it can do so, that on the sixth day of April, 1894, plaintiff was indebted to the defendant, The National Bank of Denison in the sum of five thousand dollars ($5,000.00) to cover which plaintiff executed to said defendant bank his promissory note as alleged in said complaint, and admits that plaintiff executed to said defendant bank a so-called mortgage on the coal or mining interest described in said complaint.

Defendant coal company denies that said coal claim so mortgaged or transferred to the defendant bank was worth the sum of seven thousand dollars ($7,000.00).

And denies that the royalties or profits arising on the interest of

the plaintiff would average the sum of two hundred dollars ($200.00) per month and denies that the royalties or profits arising from said coal interest has long since discharged the said indebtedness owing by plaintiff to the said defendant bank of five thousand dollars ($5,000.00) and interest thereon at ten per cent.

Defendant coal company states the fact to be that the amount of royalties which have arisen upon the said interest of said plaintiff in said coal royalties and paid by said defendant coal company to said defendant bank upon the request of said plaintiff, amounts to the aggregate sum of five thousand three hundred and twenty-one dollars and eighty cents ($5,321.80).

For further answer defendant coal company says it has no knowledge or information sufficient to form a belief as to whether
13 said defendant National Bank or said G. G. Randell, deceased, fraudulently conspired to cheat or defraud said plaintiff, or whether pursuant to said conspiracy said G. G. Randell deceased was authorized by said bank to sell said interest in said coal mines so mortgaged as alleged in said complaint, or as to whether under said appointment as the agent of said bank, said G. G. Randell, deceased, pretended to make a sale of said interest so mortgaged, or as to whether said G. G. Randell, deceased, claimed to be the highest, last and best bidder on said sale at and for the sum of two hundred and seventy-five dollars ($275.00), or any other sum, or as to whether said sum of two hundred and seventy-five dollars ($275.00) was placed as a credit on said note, or as to whether the total credit upon said note is a sum of six hundred dollars ($600.00) or any other sum, and therefore calls for the strict proof of the same.

Defendant coal company denies that the average royalty paid on said interest was not less than two hundred dollars ($200.00) per month.

Said defendant coal company states that it has no knowledge or information sufficient to form a belief as to what sum, if any, in the month of February, 1897, remained due on said five thousand dollar ($5,000.00) note.

Defendant coal company states that it has withheld payment of all royalties which accrued on the said interest in said coal mines claimed by the plaintiff from the first day of March, 1897, to the present time, the defendant coal company then first learning that there was any conflict between the said plaintiff, McBride, the said defendant bank and the said G. G. Randell, deceased, as to said royalties.

That said royalties up to and including June 28th, 1898, are as follows for each month:

March,	1897	$195.27
April,	"	200.16
May,	"	112.21
June,	"	108.60
July,	"	181.04
August,	"	123.63

Sept.,	"	177.57
Oct.,	"	190.19
Nov.,	"	218.74
Dec.,	"	194.90
Jan.,	1898	181.60
Feb.,	"	179.40
March,	"	169.39
April,	"	173.37
May,	"	121.07
June,	"	90.15

14 Defendant coal company further states that on the 28th day of June, 1898, the President of the United States approved an act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," and which said act of Congress is commonly known as the "Curtis bill," and by section sixteen of said act it was provided that it should be unlawful for any person, after the passage of said act, except as otherwise provided therein, to claim, demand or receive for his own use, or the use of any one else, any royalty on coal, or any rents on any lands or property belonging to any one of said tribes or nations in said territory, or for any one to pay to any individual any such royalty or rents, or any consideration therefor, whatsoever.

And that by virtue of the provisions of said act of Congress hereinabove referred to, on and after the 28th day of June, 1898, no royalties accrued to any person upon this said interest claimed by the plaintiff in said mines; and that by virtue of the provisions of said act of Congress hereinabove referred to, the royalty which accrued upon said interest so claimed by the plaintiff in said mines and which said coal company has not paid over to said defendant bank in accordance with plaintiff's instructions, is no longer due and payable to the said plaintiff or any person claiming under him, and cannot be claimed, demanded or received by the plaintiff, or any other person; and that by virtue of section eighteen of said act of Congress, hereinabove referred to, any person claiming, demanding or receiving any of the royalties which the plaintiff claims accrued upon the interest claimed by him in said coal mines, becomes guilty of a misdemeanor, which is punishable by a fine of not less than one hundred dollars ($100.00), and is liable to forfeit possession of the property in question.

The defendant coal company further states that it has no knowledge or information sufficient to form a belief as to whether any notice was ever given to said plaintiff or his surety, Walter Colbert, of the sale of said interest, or that in making said sale no appraisement of the mortgaged property was had or made, or as to whether the consideration at such sale was totally or wholly inadequate or unconscionable, or at such a price as in equity and good morals should not be allowed to stand, or as to whether such sale was not lawful or according to the terms of said mortgage.

Defendant coal company further denies that the said interest in said coal mines at the time of said sale was worth seven thousand dollars ($7,000.00).

15 Defendant coal company further states that it has no knowledge or information sufficient to form a belief as to whether said defendant bank intended to give its agent, G. G. Randell, deceased, a warranty deed to said property for two hundred and seventy-five dollars ($275.00).

Defendant coal company admits that said coal interest is situated in the Choctaw nation and the Indian Territory.

Defendant coal company further states that it has no knowledge or information sufficient to form a belief as to whether the said note executed by the plaintiff and described in said complaint was turned over to the said G. G. Randell, deceased, with the understanding that the remainder of said note which amounted to about four thousand four hundred dollars ($4,400.00), was to be paid by the royalty due or arising from the monthly payments of said coal interest originally mortgaged to said defendant bank by the plaintiff, or as to whether no additional payments were to be made by the said Randell, or as to whether the said Randell claimed to have purchased the coal interests at his own sale, or as to whether the only change made in the arrangement was that the said indebtedness was changed from the account of McBride to said Randell, or as to whether said Randell, after purchasing or pretending to purchase said interest left it in the hands or possession of said national bank, which delivered over the note of plaintiff to said Randell, or as to whether said Randell borrowed other money on the same, or as to whether no decrease in the amount of said indebtedness was brought about by said pretended sale, except that the sum of two hundred and seventy-five dollars ($275.00) was credited on said note, or as to whether plaintiff, a short time subsequent to said pretended sale, was informed by G. G. Randell, deceased, that said sale had been made, and that said Randell had purchased same in order to protect the interest of plaintiff, or as to whether said G. G. Randell, deceased, stated to plaintiff that he, said Randell, would reconvey said interest to plaintiff as soon as he returned to his office in the State of Texas, or as to whether said plaintiff relied implicitly on the statements of said Randell, or as to whether said Randell had always acted as plaintiff's attorney or agent in such matters, or as to whether said Randell was the attorney for plaintiff at the time of said sale, or as to whether said Randell assured plaintiff that in making said purchase of plaintiff's coal interest he had acted in the matter solely with the view of protecting the interest of plaintiff, or as to whether said Randell advised plaintiff that no change would be necessary except a reconveyance to the plaintiff of the coal interest, as alleged in said complaint, provided said coal interest so

16 mortgaged to said National Bank of Denison should remain in the possession of said bank as collateral security for the payment of said sum of five thousand dollars ($5,000.00), or so much of the same as might still be due and unpaid, or as to whether plaintiff readily consented to such an arrangement, and (therefor-) calls for strict proof of the same.

Defendant coal company further answering, states that it is informed and believes that said National Bank of Denison, and said

defendant J. H. Randell, administrator, are both claiming title to said coal interest by reason of said sale or transfer of said interest by said G. G. Randell, deceased, to said defendant bank, but as to whether said sale or transfer is founded in any way upon an illegal or void sale, or upon a pretended sale of said coal interests from said defendant bank to said G. G. Randell, deceased, defendant coal company has no knowledge or information sufficient to form a belief and therefore calls for strict proof of the same.

Defendant coal company denies that it is withholding a large sum of money, due said plaintiff, and denies that said defendant coal company is acting or conniving with said defendant bank or said defendant J. H. Randell, administrator, to carry out any unlawful claim to said coal interest described in said complaint, or for any purpose whatsoever.

Said defendant coal company states that in the matter of the controversy between the said plaintiff and the said defendant bank, and the said J. H. Randell as administrator, it has never taken any sides, whatsoever, and still occupies an impartial position as between the different parties to this suit, and denies that it is indebted to any or all of said parties.

Wherefore, having fully answered, said defendant coal company asks that it may be adjudged to go hence without day, and have and recover of the plaintiff its costs in this behalf laid out and expended.

CLIFFORD L. JACKSON,
J. G. RALLS,
Attorneys for Defendant Southwestern Coal & Improvement Company.

Indorsed: Court No. 332. In the U. S. court at Atoka. Hyram Y. McBride, plaintiff, *vs.* Nat'l Bank of Denison, The Southwestern Coal & Improvement Co., and J. H. Randell, administrator of estate of G. G. Randell, deceased, defendants. Separate answer of the Southwestern Coal and Improvement Company. Filed in open court Mar. 23rd, 1899. E. J. Fannin, U. S. clerk. Clifford L. Jackson, attorney for defendant, The Southwestern Coal & Improvement Company.

17 In the United States Court for the Central District of the Indian Territory, at Atoka.

HIRAM Y. MCBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON ET AL., Defendants. } Answer.

Comes now The National Bank of Denison, one of the defendants herein, and shows to the court that it has no interest in the subject-matter of this suit, and that it hereby disclaims any interest in the moneys now in the hands of the Southwestern Coal and Improvement Co., claimed in this action by the plaintiff and the defendant, J. H. Randell, as administrator.

STUART, LEWIS & GORDON.

Indorsed: No. 332. H. Y. McBride *vs.* Nat'l Bank *et al.* Answer of National Bank of Denison. Filed in open court March 23rd, 1899. E. J. Fannin, U. S. clerk.

Which stipulation and motion for a decree on the plaintiff's pleadings are as follows, to wit:

In the United States Court in the Central District of the Indian Territory, at Atoka.

HIRAM Y. McBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON ET AL., Defendants. } Stipulation.

Whereas the plaintiff, Hiram Y. McBride, and the defendant, J. H. Randell, as administrator, are desirous of compromising and settling this cause, and whereas the defendant, The National Bank of Denison, has filed its answer disclaiming any interest in the subject-matter of this suit, and whereas the defendant, The Southwestern Coal & Improvement Co. has filed its answer herein, showing that it has in its hands the sum of $2,617.29; now, therefore it is hereby stipulated and agreed by and between the said H. Y. McBride and the said J. H. Randell, as administrator, that the said H. Y. McBride shall take of the said sum now in the hands of the said Southwestern Coal and Improvement Co. the sum of nine hundred dollars ($900.00), and that the said J. H. Randell may take the remainder of the said sum in the hands of the Southwestern Coal & Improvement Co., to wit, the sum of seventeen hundred and seventeen dollars and twenty-nine cents ($1,717.29), each of said parties to accept said sums in full of his demands in this action and each of said parties to pay his own costs in this case.

18 In witness whereof the said parties to this stipulation have signed their names by their respective attorneys this 23rd day of March, 1899.

H. Y. McBRIDE,
By his attorney, G. A. PATE.
STUART, LEWIS & GORDON,
Att'ys for J. H. Randell, as Administrator.

Indorsed: No. 332. H. Y. McBride *vs.* National Bank of Denison *et al.* Stipulation. Filed in open court March 23rd, 1899. E. J. Fannin, U. S. clerk.

HYRAM McBRIDE, Plaintiff,
vs.
THE NATIONAL BANK OF DENISON ET AL., Defendants. } Motion for Judgment.

Come now the plaintiff, H. Y. McBride, and the defendant, J. H. Randell, as administrator, and move the court that upon the pleadings in this cause and the stipulation heretofore filed herein, they have judgment against the Southwestern Coal and Improvement Co.

in the sum of twenty-six hundred and seventeen dollars and twenty-nine cents.

H. Y. McBRIDE,
By his attorney, G. A. PATE.
STUART, LEWIS & GORDON,
For Def't.

Indorsed: No. 332. H. Y. McBride *vs.* National Bank *et al.* Motion for judgment. Filed in open court March 23rd, 1899. E. J. Fannin, U. S. clerk.

Thereupon, on the same day, among the proceedings had were the following, to wit:

H. Y. McBRIDE
vs.
NATIONAL BANK ET AL.

On this 23rd day of March, 1899, the same being one of the days of the regular March, 1899, term of this court, came on to be heard the motion this day filed by plaintiff Hiram Y. McBride and defendant, J. H. Randell, as administrator, for a decree against the Southwestern Coal & Improvement Co. And all the parties to this action appeared by their respective attorneys. And the court having seen the pleadings and having heard the arguments of counsel, and being well and fully advised in the premises, doth sustain said motion. And it appearing to the court from the answer heretofore filed by the said Southwestern Coal and Improvement Co. that it has in its possession the sum of $2,617.29, the same being royalties on interest claimed by Hiram McBride and in controversy in this case, for coal mined be-
19 fore the 28th day of June, 1898, said royalties having accrued before said date, and it further appearing to the court that plaintiff, H. Y. McBride, and defendant, J. H. Randell, as administrator, have filed their stipulation herein whereby it is agreed that said H. Y. McBride is entitled to the sum of nine hundred dollars and the said J. H. Randell, as administrator, is entitled to the sum of seventeen hundred and seventeen dollars and twenty-nine cents out of said fund now in the hands of said Southwestern Coal & Improvement Co.

It is therefore by the court considered, adjudged and decreed that the said H. Y. McBride and the said J. H. Randell, as administrator, have and recover of the said Southwestern Coal & Improvement Co. the sum of twenty-six hundred and seventeen dollars and twenty-nine cents; that the said McBride and Randell each pay one-half of all the costs of this suit, and that the said Southwestern Coal & Improvement Co. be allowed thirty days from this date within which time it shall pay said sum of money to the clerk of this court. It is further ordered that upon receipt of said sum of money by said clerk, he shall pay out of the same to H. Y. McBride or his attorneys of record, the sum of $900.00, and shall pay the remainder to

the said J. H. Randell as administrator or to his attorneys of record in this case.

Whereupon court arose.

WM. H. H. CLAYTON, *Judge.*

UNITED STATES OF AMERICA, *Indian Territory, Central District,* } ss:

I, Edward J. Fannin, clerk of the United States court for the central district of the Indian Territory, do hereby certify that the foregoing is a true, perfect and complete copy of all the orders made in the above-entitled action and of all the pleadings filed therein, and that the costs of said action as taxed are as follows:

Marshal's costs, $2.00. Clerk's costs, $16.80.

In testimony whereof I have hereunto set my hand at Atoka in the central district of the Indian Territory, and affixed my official seal this the 6 day of April, A. D. 1899.

United States Court, Central District, in the Indian Territory.

E. J. FANNIN, *Clerk,*
By D. H. ROBB, *Deputy.*

20 In the United States Court of Appeals for the Indian Territory.

THE SOUTHWESTERN COAL AND IMPROVEMENT Company, Appellant,
vs.
HYRAM Y. MCBRIDE ET AL., Appellees.
} Court No., —. Application for Appeal.

The above-named appellant, The Southwestern Coal and Improvement Company, applies to the Honorable William P. Freeman, clerk of the United States court of appeals for the Indian Territory to grant it an appeal from the judgment rendered in this case by the United States court for the central judicial district of the Indian Territory, at Atoka, I. T., at the March, 1899, term thereof, and which said judgment was entered on the 23rd day of March, A. D., 1899, and for ground of this application respectfully shows that there are numerous manifest errors committed by the United States court for the central judicial district of the Indian Territory, as appears from the transcript of record in this case attached hereto.

CLIFFORD L. JACKSON,
Attorney for Appellant.

In the United States Court of Appeals for the Indian Territory.

THE SOUTHWESTERN COAL AND IMPROVEMENT Company, Appellant.
vs.
HYRAM Y. MCBRIDE ET AL., Appellees.
} Court No., —. Order of Appeal.

CLERK'S OFFICE, SOUTH MCALESTER, I. T.

Now at this day the application of the above-named appellant, for appeal from the judgment of the United States court for the central

judicial district of the Indian Territory, having been presented to me, the undersigned clerk of the United States court of appeals for the Indian Territory, said application having been seen and heard by me, is granted, and said appellant is granted an appeal in this case from the judgment of the United States court for the central judicial district of the Indian Territory, to the United States court of appeals for the Indian Territory.

In witness whereof, I have hereunto set my hand as said clerk, and attach the seal of said court at my office in South McAlester, Indian Territory, on this 8th day of June, A. D. 1899.

WM. P. FREEMAN,
Clerk of the United States Court of Appeals for the Indian Territory.

21 Which said transcript, petition for appeal, and order granting appeal is endorsed, as follows, to wit:

"Filed June 8th, 1899.

"WM. P. FREEMAN, *Clerk.*"

And afterwards, to wit: on the said 8th day of June, 1899, the said appellant filed its supersedeas bond in said cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Indian Territory, } *ss:*

In the Court of Appeals.

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY, Appellant, }
vs. }
HYRAM Y. MCBRIDE, Appellee. }

Appeal from central district, Indian Territory.

Whereas, the appellant, Southwestern Coal and Improvement Company, has taken an appeal from the judgment of the United States court for the central district, rendered at its March term, 1899, against it in favor of the appellees, H. Y. McBride, and J. H. Randell, adm'r, for the sum of two thousand six hundred seventeen and $\frac{22}{100}$ dollars, with costs, and the appellant desires to supersede said judgment now —— —— and —— ——, sureties, hereby covenant with the said appellees that the said appellant will pay to the appellees all costs and damages that may be adjudged against the appellant on the appeal, or in the event of the failure of the appellant to prosecute said appeal to a final judgment in the court of appeals, or if said appeal shall for any cause be dismissed, that said sureties shall pay to the appellees all costs and damages, and shall perform the judgment of the court appealed from; also that said appeal shall be prosecuted without delay; also that they will satisfy and perform the judgment or order appealed from in case it should be affirmed, and any judgment or order which the court of appeals may render, or order to be rendered by the inferior court, not ex-

ceeding in amount or value the original judgment or order, and all rents or damages to property during the pendency of the appeal of which the appellees are kept out of possession by reason of the appeal.

Witness our hands this seventh day of June, 1899.

H. B. SPAULDING.
C. W. TURNER.

Approved:
WM. P. FREEMAN, *Clerk.*

Which said supersedeas bond is endorsed as follows, to wit:

No. 252. In the court of appeals. Southwestern Coal &
22 Improvement Co., appellant, *vs.* Hiram McBride *et al.*, appellees. Supersedeas bond. Approved and filed June 8th, 1899. Wm. P. Freeman, clerk.

Upon which supersedeas bond a writ of supersedeas issued.

And afterwards, to wit: on the said 8th day of June, 1899, a summons issued in said cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Indian Territory, }

In the Court of Appeals.

The President of the United States of America to the marshal of central district, Indian Territory, Greeting:

Whereas, in a case lately pending in the United States court for the central district of the Indian Territory, wherein Hyram Y. McBride was plaintiff, and The National Bank of Denison, The Southwestern Coal and Improvement Company, and J. H. Randell, administrator of the estate of G. G. Randell, deceased, defendants, judgment and decree was rendered against said Southwestern Coal and Improvement Company, and it has prayed an appeal to the United States court of appeals in the Indian Territory, returnable to the next term.

It is therefore hereby commanded that you summon said Hyram Y. McBride and J. H. Randell, administrator of the estate of G. G. Randell, deceased, to appear before the United States court of appeals in the Indian Territory on the first Tuesday in January next, to defend in said cause.

Hereof fail not, and make due return of this writ, and certify your execution thereof.

In testimony whereof, I hereunto set my hand and affix the seal of the said court of appeals, at my office in the town of South McAlester, this 8th day of June, 1899.

[SEAL.] WM. P. FREEMAN, *Clerk.*

Which said summons is endorsed as follows, to wit:

"Service of within summons accepted as to J. H. Randell, adm'r, this June 8th, 1-99

LEWIS & GORDON,
Att'ys for J. H. Randell, Adm'r."

"I certify that a true copy of within summons was served on Hiram Y. McBride, at his residence, 8 miles S. E. of Minco, on August 8, 1899.

J. S. HAMMER,
U. S. Marshal,
By C. MADSON, *Deputy.*

Cost & Fees.

Service	$2.00
Team hire	2.00
Meals & lodging	1.00
R. R. fare	1.00
	$6.00

Filed Aug. 22, 1899.
W. P. FREEMAN, *Clerk.*"

And afterwards, to wit: On the 17th day of November, 1899, the said appellant filed its motion to tax cost of printing record in said cause, which is in words and figures following, to wit:

In the United States Court of Appeals for Indian Territory.

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY, Plaintiff in Error,
vs.
HYRAM Y. MCBRIDE, Defendant in Error. } No. 252.

Comes now The Southwestern Coal and Improvement Company, as plaintiff in error in the above-entitled cause, and moves the court to tax as costs in this case the items of eighteen ($18.00) dollars paid by said plaintiff in error for printing the transcript of record in this cause, and in proof of such payment by the plaintiff in error, there is filed herewith and made a part of this motion the receipted account of the printing company, supported by the affidavit of the manager of said company and the affidavit of the attorney for the plaintiff in error.

CLIFFORD L. JACKSON,
Attorney for Plaintiff in Error.

UNITED STATES OF AMERICA, }
Indian Territory, Northern Judicial District, } *ss:*

Clifford L. Jackson, of lawful age, first being duly sworn on his oath states that the plaintiff in error in the above-entitled cause is a corporation; that he is attorney for said plaintiff in error; that he has read and is familiar with the attached motion to tax as costs the amount paid by plaintiff in error for printing and binding of
24 the transcript of record in said cause; that he is familiar with the contents of the attached account for such printing and the affidavit of the manager of the printing company; that said account is correct and that said amount of eighteen dollars was ac-

tually paid by the said plaintiff in error to said Phœnix Printing Company for printing said transcript of record in said cause.

CLIFFORD L. JACKSON.

Subscribed and sworn to before me at my office in Muskogee, in the northern district of Indian Territory on this the 15th day of November, A. D. 1899.

[SEAL.]

D. A. YANCY,
Notary Public within and for the Northern District of the Indian Ter'y.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District.

Frank C. Hubbard, of lawful age, first being duly sworn, on his oath states that he is the manager of the Phœnix Printing Company of Muscogee, Indian Territory; that the attached is a true and correct bill for the printing of the transcript of the record in the case of The Southwestern Coal and Improvement Company, plaintiff in error, *versus* H. Y. McBride, defendant in error, pending in the United States court of appeals for Indian Territory; and that the said bill or account has been paid in full by the said plaintiff (—) error.

F. C. HUBBARD.

Subscribed and sworn to before me at my office in Muscogee in the northern district of the Indian Territory on this the 15th day of November, A. D. 1899.

[SEAL.]

D. A. YANCY,
Notary Public within and for the Northern District of Ind. Ter.

MUSCOGEE, IND. TER., *June 15th*, 1899.

Clifford L. Jackson, general attorney Missouri, Kansas and Texas Railway Company, to the Phœnix Printing Company, Muscogee, Indian Territory, Dr.

For printing and binding transcript of record in the case of The Southwestern Coal and Improvement Co., plaintiff in error, *versus* H. Y. McBride, defendant in error, twenty pages at ninety cents per page..... $18.00

Received payment in full.

F. C. HUBBARD,
Manager Phœnix Printing Company.

25 Indorsed: No. 252. In the United States court of appeals for Indian Territory. Southwestern Coal and Improvement Company, pl'ff in error, *vs.* H. Y. McBride, def't in error. Motion of plaintiff in error to tax cost of printing the record. Filed Nov. 17, 1899. Wm. P. Freeman, clerk. Clifford L. Jackson, attorney for pl'ff in error.

And afterwards, to wit: on the second day of January, A. D. 1900, it being the first day of the regular January term, 1900, of the United States court of appeals in the Indian Territory, the said court handed down its opinion in said cause, which is in the words and figures following, to wit:

In the United States Court of Appeals in the Indian Territory.

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY, Appellant,
vs.
H. Y. McBRIDE ET AL., Appellees.
} No. 252.

Appeal from the United States court for the central district of (*of*) the Indian Territory, Hon. Wm. H. H. Clayton, judge.

Clifford L. Jackson and J. G. Ralls, for appellant; Stuart, Lewis & Gordon, for the appellees.

Opinion.

THOMAS, *J.:*

In the case of Atoka Coal and Mining Company *v.* Adams *et al.*, decided by us at the last October term of this court, 53 S. W. Rep., 509, we held that the Atoka agreement, abrogating all mining leases made by any person or corporation with the members of the Choctaw or Chickasaw nation, and directing that coal mines then in operation should thereafter be operated under the supervision of the Secretary of the Interior, and that the royalties should be paid into the United States Treasury, etc., and the act of Congress of June 28, 1898, known as the "Curtis bill," (section 16), declaring it to be unlawful for any person, after the passage of the act, except as therein provided, to claim, demand or receive any royalties on certain minerals, and requiring that royalties should thereafter be paid into the Treasury of the United States to the credit of the tribe, etc., did not effect the rights of individual citizens of the Choctaw nation to royalties earned and payable when the act was passed, nor destroy the right of action for enforcing the same. And as the only question presented to us for our determination in this case is identical with that decided by us in that case, (adhearing) to that decision, we adopt the opinion then handed down as expressing our view of the question of law arising here.

26 The judgment of the court below is affirmed.
Townsend, J. and Gill, J., concur.

Upon which said opinion the said United States court of appeals in the Indian Territory, on the said 2nd day of January, 1900, rendered and caused to be entered of record the following judgment in said cause, to wit:

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY, Appellant,
vs.
HIRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.

Appeal from the court for the central district.

This cause came on (*the*) be heard upon the transcript of the record of the court for the central district of the Indian Territory, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said court for the central district in this cause.

It is therefore considered by the court that the judgment of said court for the central district in this cause rendered, be and the same is hereby in all things affirmed with costs.

And it appearing to the court that said appellant with Clarence W. Turner and Homer B. Spaulding as sureties has filed a supersedeas bond in this cause.

It is therefore considered that said appellee recover of said appellant and said Clarence W. Turner and Homer B. Spaulding the sum of twenty-six hundred and seventeen & $\frac{29}{100}$ dollars with interest at six per cent. per annum from the 23 day of March A. D. 1899, the amount of judgment in said court for the central district, and the further sum of two hundred and sixty-one dollars and seventy-two cents, being ten per cent. thereon and costs.

It is further considered that said appellees recover of said appellant and said sureties all their costs in this court in this cause expended, and have execution thereof, as well as of said judgment.

And thereupon, and on the same day, come the appellants, The Southwestern Coal and Improvement Company, Clarence W. Turner, and Homer B. Spaulding, and file in open court their petition for appeal from the foregoing judgment and decree, together with their assignments of error and their appeal bond, and said petition for appeal is thereupon in open court allowed and said appeal
27 granted to the United States circuit court of appeals for the eighth circuit, and said appeal bond is approved.

Which said petition for appeal is in the words and figures following, to wit:

In the United States Court of Appeals for Indian Territory.

SOUTHWESTERN COAL & IMPROVEMENT COMPANY, Clarence W. Turner, and Homer B. Spaulding, Appellants, *vs.* HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.	Petition for Appeal.

To the honorables the chief justice and associate justices of the United States court of appeals for the Indian Territory in open court:

Now come The Southwestern Coal and Improvement Company, and Clarence W. Turner and Homer B. Spaulding, sureties on its appeal bond herein, as appellants, and respectfully represent that they have been prejudiced and aggrieved by the action of the trial court in the above-entitled cause, and by the orders and final decree entered therein, and to which orders and decree it then and there at the time duly excepted, as also by the opinion, judgment, order and decree of the United States court of appeals for the Indian Territory herein, and files herewith their assignment of errors and appeal bond, and pray an appeal from said judgment, order and decree, to the United States circuit court of appeals for the eighth circuit, and pray that their said appeal may be allowed, and that a transcript of the record and proceedings upon which the said judgment, order and decree were made, duly authenticated, may be sent to the United States circuit court of appeals for the eighth circuit, in order that said judgment, order and decree of the United States court of appeals for the Indian Territory and also the actions, orders, decree, and judgment of the trial court, complained of in the said assignment of error- herewith filed, may be reviewed, and if erroneous, corrected according to the laws and customs of the United States.

CLIFFORD L. JACKSON,
Attorney for the Appellants.

Allowed in open court:
WM. H. H. CLAYTON,
Chief Justice.

Indorsed: No. 252. In the United States court of appeals for Indian Territory. The Southwestern Coal and Improvement Co. *et al.* appellants, *vs.* Hyram Y. McBride, *et al.*, appellees. Petition for appeal. Filed January 2, 1900. Wm. P. Freeman, clerk. Clifford L. Jackson, attorney for appellants.

28 And which said assignment of errors is in the words and figures following, to wit:

In the United States Court of Appeals for Indian Territory.

SOUTHWESTERN COAL & IMPROVEMENT CO., Clarence W. Turner, and Homer B. Spaulding, Appellants, *vs.* HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.	No. 252. Assignments of Error.

Now comes The Southwestern Coal & Improvement Company, Clarence W. Turner, and Homer B. Spaulding, and say that in the foregoing record and proceedings there is manifest error in the action and rulings of the United States court for the central judicial district of the Indian Territory, as well as in the action, rulings, opinion, judgment and decree of the United States court of appeals for the Indian Territory, in this, to wit:

1.

The trial court erred in overruling appellants' demurrer to the complaint in this cause, and the United States court of appeals for the Indian Territory erred in not correcting the error of the trial court.

2.

The trial court erred in sustaining the motion of Hyram Y. McBride and J. H. Randell as administrator, for judgment against the Southwestern Coal and Improvement Company, and the United States court of appeals for the Indian Territory erred in not correcting this error of the trial court.

3.

The trial court erred in entering judgment and final decree against the appellant on the pleadings in this cause, and the United States court of appeals for the Indian Territory erred in not correcting this error of the trial court.

4.

The United States court of appeals for the Indian Territory erred in rendering judgment against Clarence W. Turner and Homer B. Spaulding.

5.

The United States court of appeals for the Indian Territory erred in rendering judgment against the appellants herein in a sum over and above the amounts called for in the original decree and interest thereon at the rate of six per cent. per annum, said additional
29 sum being declared to be ten per cent. upon the sum of the amount called for by the original decree and interest thereon at the rate of six per cent. per annum.

Wherefore, and for divers other errors apparent on the face of the record, the Southwestern Coal and Improvement Company

Clarence W. Turner and Homer B. Spaulding, pray that the proceedings, as well as the said judgment of both the United States court for the central judicial district of the Indian Territory, and the said United States court of appeals for the Indian Territory, be reversed.

CLIFFORD L. JACKSON,
Attorney for the Appellants.

Indorsed: No. 252. In the United States court of appeals for Indian Territory. Southwestern Coal & Improvement Co. *et al.*, appellants, *vs.* Hyram Y. McBride, *et al.*, appellees. Assignments of error. Filed Jan. 2, 1900 Wm. P. Freeman, clerk. Clifford L. Jackson, attorney for appellants.

Which said appeal bond is in the words and figures following, to wit:

In the United States Court of Appeals for Indian Territory.

THE SOUTHWESTERN COAL AND IMPROVEMENT Co., Clarence W. Turner, and Homer B. Spaulding, Appellants, *vs.* HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.	No. 252. Appeal Bond.

Know all men by these presents: That we, Clarence W. Turner and Cornelius E. Foley, are held and firmly bound unto Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, in the full and just sum of five thousand dollars ($5,000.00), to be paid to the said Hyram Y. McBride and J. H. Randell as administrator, their heirs, executors, administrators, assigns, or successors, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this second day of January in the year of our Lord one thousand and nine hundred.

Whereas, lately at the January, A. D. 1900, term of the United States court of appeals for the Indian Territory, in a suit depending in said court between the Southwestern Coal and Improvement Company, as appellant, and Clarence W. Turner and Homer B. Spaulding as sureties on its appeal bond, and Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, judgment was rendered against the said appellant, and said sureties on its appeal bond, and the said Southwestern Coal and Improvement Company, and Clarence W. Turner and Homer B. Spaulding, as sureties on its said bond, have obtained an appeal from the United States court of appeals for the Indian Territory to reverse the judgment of the aforesaid suit, which said appeal was allowed by the said United States court of ap-

peals for the Indian Territory in open court at the said January, A. D. 1900, term.

Now the condition of the above obligation is such that if the said Southwestern Coal and Improvement Company, and Clarence W. Turner and Homer B. Spaulding, as sureties on its appeal bond, shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make good their plea, then the above obligation to be void; otherwise to remain in full force and effect.

CLARENCE W. TURNER.
CORNELIUS E. FOLEY.

Approved in open court:
WM. H. H. CLAYTON,
Chief Justice.

Indorsed: No. 252. In the United States court of appeals for Indian Territory. Southwestern Coal & Improvement Co. *et al.* appellants, *vs.* Hyram Y. McBride *et al.* appellees. Appeal bond. Filed Jan. 2, 1900. Wm. P. Freeman, clerk. Clifford L. Jackson, attorney for appellants.

UNITED STATES OF AMERICA, }
Indian Territory, } *ss:*

In the Court of Appeals.

I, William P. Freeman, clerk of the United States court of appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings in the cause therein named, in said court, as the same remains on file and of record in my office.

Seal United States Court of Appeals, in the Indian Territory.

In witness whereof, I have hereunto set my hand and affixed the seal of our said court at office in the city of South McAlester, Indian Territory, this 15th day of January, A. D. 1900.

WM. P. FREEMAN, *Clerk.*

(Canceled 10c. U. S. rev. stamp.)

Filed Jan. 17, 1900.

JOHN D. JORDAN, *Clerk.*

31 (*Appearance for Appellants.*)

And on the twenty-second day of January, A. D. 1900, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

THE SOUTHWESTERN COAL AND IMPROVEMENT COMPANY *et al.*, Appellants,
vs.
HYRAM Y. MCBRIDE ET AL. } No. 1386.

The clerk will enter my appearance as counsel for the appellants.

CLIFFORD L. JACKSON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. December term, 1899. No. 1386. Southwestern Coal and Improvement Co., *et al.*, appellants, *vs.* Hyram Y. McBride, *et al.* Appearance. Filed Jan. 22, 1900. John D. Jordan, clerk. Clifford L. Jackson, Muscogee, Ind. Ter., counsel for appellants.

(*Appearance for Appellees.*)

And on the twenty-first day of February, A. D. 1900, an appearance of counsel for appellees was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY ET AL., Appellants,
vs.
HYRAM Y. MCBRIDE ET AL. } No. 1386.

The clerk will enter *my* appearance as counsel for the appellees.

YANCEY LEWIS.
J. H. GORDON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit.
32 May term, 1900. No. 1386. Southwestern Coal and Improvement Company, *et al.*, appellants, *vs.* Hyram Y. McBride, *et al.* Appearance. Filed Feb. 21, 1900, John D. Jordan, clerk. Yancey Lewis, J. H. Gordon, counsel for appellees.

(*Order of Submission.*)

And on the twenty-first day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *May* 21, 1900.

THE SOUTHWESTERN COAL AND IMPROVEMENT COMPANY *et al.*, Appellants,
vs.
HYRAM Y. MCBRIDE ET AL. } No. 1386.

Appeal from the United States court of appeals in the Indian Territory.

This cause having been called for hearing in its regular order, and counsel not appearing to argue orally, this cause was thereupon taken by the court as submitted on the transcript of record from said United States court of appeals and the briefs of counsel filed herein.

(*Opinion.*)

And on the twenty-fourth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed in said cause, in the following words, to wit:

33 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1900.

SOUTHWESTERN COAL AND IMPROVEMENT Company *et al.*, Appellants,
vs.
HYRAM Y. MCBRIDE ET AL., Appellees. } No. 1386. Appeal from the United States Court of Appeals in the Indian Territory.

Mr. Clifford L. Jackson and Mr. Joseph M. Bryson submitted a brief for appellants.

Mr. G. A. Pate, Mr. Yancey Lewis and Mr. J. H. Gordon submitted a brief for appellees.

Before Caldwell, Sanborn, and Thayer, circuit judges.

CALDWELL, circuit judge, delivered the opinion of the court.

The only question in this case was decided by the court in the case of Atoka Coal and Mining Company and The Choctaw Nation *v.* H. W. Adams *et al.*, and on the authority of that case the judgment of the United States court of appeals for the Indian Territory, and the judgment of the United States court for the central district of the Indian Territory in this case are affirmed.

Filed October 24, 1900.

34 (*Decree.*)

And on the twenty-fourth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is a decree in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *October* 24, 1900.

THE SOUTHWESTERN COAL AND IMPROVEMENT COMPANY, Clarence W. Turner, and Homer B. Spaulding, Appellants,
vs.
HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased. } No. 1386.

Appeal from the United States court of appeals in the Indian Territory.

This cause came on to be heard on the transcript of the record from the United States court of appeals in the Indian Territory, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said United States court of appeals, and the decree of the United States court for the central district of the Indian Territory, in this cause, be, and the same are each hereby, affirmed with costs; and that Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, have and recover against the Southwestern Coal and Improvement Company, Clarence W. Turner and Homer B. Spaulding the sum of twenty dollars for their costs herein and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the United States court for the central district of the Indian Territory, with directions for proceedings therein according to law and justice.

October 24, 1900.

(*Assignment of Errors.*)

And on the eighteenth day of December, A. D. 1900, there was filed in the clerk's office of said circuit court of appeals, in
35 said cause, an assignment of errors, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

SOUTHWESTERN COAL & IMPROVEMENT COMPANY, Clarence W. Turner, Homer B. Spaulding, and Cornelius E. Foley, Appellants,
vs.
HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees. } No. 1386. Assignment of Errors.

Now come the Southwestern Coal & Improvement Company Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley and say that in the foregoing record and proceedings there is mani

fest error in the actions and rulings of the United States court for the central judicial district of the Indian Territory, as well as in the actions, rulings, opinion, judgment and decree of the United States court of appeals for the Indian Territory, and also in the actions, rulings, opinion, judgment and decree of the United States court of appeals for the eighth circuit in this, to wit:

The United States court for the central judicial district of the Indian Territory erred—

1. In overruling appellants' demurrer to the complaint in this cause.

2. In sustaining the motion of Hyram Y. McBride and J. H. Randell, as administrator, for judgment against the Southwestern Coal & Improvement Company.

3. In entering judgment and final decree against the appellant The Southwestern Coal & Improvement Company on the pleadings in this cause.

The said United States court of appeals for the Indian Territory erred in not reversing the judgment and final decree of the said United States court for the central judicial district of the Indian Territory because of each several error of the latter court as to its actions and rulings as to each and every one of the several errors above specified, and said United States circuit court of appeals for the eighth circuit erred in not reversing the said judgment and final decree of the said United States court of appeals for the Indian Territory because of each several error of the latter court as
36 to its actions and rulings as to each and every one of the several errors above specified.

4. The United States court of appeals for the Indian Territory erred in rendering judgment and final decree against Clarence W. Turner and Homer B. Spaulding, and the said United States circuit court of appeals for the eighth circuit erred in not reversing the judgment and final decree of the said United States court of appeals for the Indian Territory.

5. The United States court of appeals for the Indian Territory erred in rendering judgment and final decree against the appellants herein in a sum over and above the amounts called for in the original decree and interest thereon at the rate of six per cent. per annum, said additional sum being declared to be ten per cent. upon the sum of the amounts called for by the original decree and interest thereon at the rate of six per cent. per annum; and the United States circuit court of appeals for the eighth circuit erred in not reversing said judgment and decree of the United States court of appeals for the Indian Territory.

6. The United States circuit court of appeals for the eighth circuit erred in rendering judgment and final decree against Clarence W. Turner and Cornelius E. Foley.

Wherefore, and for divers other errors apparent on the face of said record, the Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley pray that said proceedings, as well as the said judgment and final decree of both the United States court for the central judicial district of the

Indian Territory, and the said United States court of appeals for the Indian Territory, and the said United States circuit court of appeals for the eighth circuit, be reversed.

JAMES HAGERMAN.
CLIFFORD L. JACKSON,
JOSEPH M. BRYSON,
Attorneys for Appellants.

(Endorsed:) No. 1386. U. S. circuit court of appeals, eighth circuit. Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley, appellants, *vs.* Hyram Y. McBride and J. H. Randell as administrator of the estate of G. G. Randell, deceased, appellees. Assignments of error. Filed Dec. 18, 1900, John D. Jordan, clerk.

37 (*Petition for Appeal.*)

And on the eighteenth day of December, A. D. 1900, there was filed in the clerk's office of said circuit court of appeals, in said cause, a petition for appeal, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding, and Cornelius E. Foley, Appellants, *vs.* Hyram Y. McBride and J. H. Randell, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.	No. 1386. Petition for Appeal.

To the honorable the judges of the United States circuit court of appeals, eighth circuit:

Now come the Southwestern Coal & Improvement Company, Clarence W. Turner and Homer B. Spaulding, and Clarence W. Turner and Cornelius E. Foley, as sureties on their appeal bond herein, as appellants, and respectfully show that the above-entitled cause is now pending in the United States circuit court of appeals for the eighth circuit, and a judgment and decree has therein been rendered affirming a judgment and decree of the United States court of appeals for the Indian Territory, and a judgment and decree of the United States court for the central judicial district of the Indian Territory, and that the matter in controversy in said suit exceeds one thousand dollars, besides costs, and that the jurisdiction of none of the other courts above mentioned is dependent in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of the different States, and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon appeal; and therefore your petitioners would

respectfully pray that an appeal be allowed them in the above-entitled cause, and that the clerk of the United States circuit court of appeals for the eighth circuit be directed to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the
38 errors complained of in the assignments of error herewith filed by said appellants may be reviewed, and, if error be found, corrected according to the laws and customs of the United States.

SOUTHWESTERN COAL & IMPROVEMENT COMPANY,
CLARENCE W. TURNER,
HOMER B. SPAULDING, AND
CORNELIUS E. FOLEY,
By JAMES HAGERMAN,
CLIFFORD L. JACKSON,
JOSEPH M. BRYSON,
Attorneys for Appellants.

The above petition for appeal is hereby allowed, and the appeal prayed for therein granted, this 18th day of December, 1900.

HENRY C. CALDWELL,
U. S. Circuit Judge in and for the Eighth Circuit.

(Endorsed:) No. 1386. U. S. circuit court of appeals, eighth circuit. Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley, appellants, *vs.* Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, appellees. Petition for appeal. Filed Dec. 18, 1900, John D. Jordan, clerk.

(*Order Granting Appeal.*)

And on the eighteenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order granting an appeal, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

TUESDAY, *December* 18, 1900.

SOUTHWESTERN COAL & IMPROVEMENT COMPANY, CLARENCE W. TURNER, HOMER B. SPAULDING, and CORNELIUS E. FOLEY, Appellants,
vs.
HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.
} No. 1386.

Appeal from the United States court of appeals in the Indian Territory.

On this 18th day of December, 1900, the petition for an
39 appeal on behalf of the above-named appellants in the above-entitled cause, together with an assignment of errors, all of which have been filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, having been presented to the undersigned U. S. circuit judge in and for the eighth circuit, and the same having been fully considered, it is hereby ordered that the appeal prayed for in said cause, be and the same is hereby granted from the United States circuit court of appeals for the eighth circuit to the Supreme Court of the United States, and that the amount of the bond upon said appeal be and hereby is fixed at the sum of five thousand dollars, and that a certified transcript of the record and proceedings in said cause be forthwith transmitted to the said Supreme Court of the United States.

HENRY C. CALDWELL,
U. S. Circuit Judge in and for the Eighth Circuit.

(*Appeal Bond.*)

And on the eighteenth day of December, A. D. 1900, there was filed in the clerk's office of said circuit court of appeals, in said cause, an appeal bond, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

SOUTHWESTERN COAL & IMPROVEMENT Company, Clarence W. Turner, Homer B. Spaulding, and Cornelius E. Foley, Appellants,
vs.
HYRAM Y. MCBRIDE and J. H. RANDELL, as Administrator of the Estate of G. G. Randell, Deceased, Appellees.
} No. 1386. Appeal Bond.

Know all men by these presents: That we H. B. Spaulding, A. W. Robb and C. W. Turner are held and firmly bound unto Hyram Y.

McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, in the full and just sum of five thousand ($5,000.00) dollars, to be paid to the said Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, their heirs, executors, administrators, assigns or successors, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this — day of December, in the year of our Lord, one thousand, nine hundred.

Whereas, lately, at the May, 1900, term of the United States circuit court of appeals for the eighth circuit, in a suit depending in said court between The Southwestern Coal & Improvement Company, Clarence W. Turner and Homer B. Spaulding, as appellants, and Clarence W. Turner and Cornelius E. Foley as sureties on its appeal bond, and Hyram Y. McBride and J. H. Randell as administrator of the estate of G. G. Randell, deceased, judgment was rendered against the said appellants and said sureties on their appeal bond, and the said Southwestern Coal & Improvement Company and Clarence W. Turner and Homer B. Spaulding, as appellants, and the said Clarence W. Turner and Cornelius E. Foley as sureties on their said appeal bond, have obtained an appeal from the United States circuit court of appeals for the eighth circuit to the Supreme Court of the United States, to reverse the judgment and decree in the aforesaid suit, and a citation directed to the said Hyram Y. McBride and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, citing and admonishing the said Hiram Y. McBride and the said J. H. Randell, as administrator of the estate of G. G. Randell, deceased, to be and appear in the United States Supreme Court at the city of Washington, District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation is to be void, else to remain in full force and virtue.

H. B. SPAULDING. [SEAL.]
A. W. ROBB. [SEAL.]
C. W. TURNER. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved as supersedeas:

HENRY C. CALDWELL,
U. S. Circuit Judge, Eighth Circuit.

December 18th, 1900.

UNITED STATES OF AMERICA,
Northern Judicial District of the Indian Territory.

I, Charles A. Davidson, clerk of the United States court for the northern judicial district of the Indian Territory, do hereby certify that the above and foregoing named sureties, H. B. Spaulding, A. W. Robb and C. W. Turner are sufficient sureties for the above-named sum of five thousand dollars.

[SEAL.] CHAS. A. DAVIDSON, *Clerk.*
P. M. FORD, *Deputy.*

(Endorsed:) No. 1386. U. S. circuit court of appeals, eighth circuit. Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley, appellants, *vs.* Hyram Y. McBride and H. H. Randell, as administrator of the estate of C. G. Randell, deceased, appellees. Appeal bond. Filed Dec. 18, 1900. John D. Jordan, clerk.

(*Citation.*)

And on the fifteenth day of January, A. D. 1901, there was filed in the clerk's office of said circuit court of appeals, in said cause, a citation, the original of which, with the return of service thereon, is hereto attached and herewith returned.

42 UNITED STATES OF AMERICA,
Central District of the Indian Territory.

I hereby certify that I received the within and attached citation on the fifth day of January, 1901, and that I served the same by leaving a copy thereof with J. H. Gordon, a member of the law firm of Stuart, Lewis & Gordon as solicitor and attorney in the action for J. H. Randell, as administrator of the estate of G. G. Randell, deceased, and The National Bank of Denison, Texas, at South McAlester, in said central district of the Indian Territory, on the 5th day of January, 1901.

J. P. GRADY,
U. S. Marshal for the Central District of the Indian Territory,
By R. C. LEE, *Deputy.*

UNITED STATES OF AMERICA,
Central District of the Indian Territory.

I hereby certify that I received the within and attached citation on the fifth day of January, 1901, and that I served the same by leaving a copy thereof with G. A. Pate as solicitor and attorney in the action for Hyram Y. McBride at Todds, in said central district of the Indian Territory, on the 8th day of January, 1901.

J. P. GRADY,
U. S. Marshal for the Central District of the Indian Territory,
By W. C. YORK, *Deputy.*

UNITED STATES OF AMERICA:

To Hyram Y. McBride, and J. H. Randell, as administrator of the estate of G. G. Randell, deceased, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley are appellants, and you are appellees, to show cause, if any there be, why the judgment and decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Henry C. Caldwell, U. S. circuit judge eighth circuit, this 18th day of December, in the year of our Lord, one thousand, nine hundred.

HENRY C. CALDWELL,
U. S. Circuit Judge in and for the Eighth Circuit.

Service of the above citation is hereby acknowledged.

—— ——,
Attorneys for Appellees.

43 [Endorsed:] Original. No. —. United States Supreme Court. Southwestern Coal & Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley, appellants, *vs.* Hyram Y. McBride and J. H. Randell as administrator of the estate of G. G. Randell, deceased, Citation.

Service on J. H. Gordon	50c.
Service on G. A. Pate	50c.
Mileage	2.00
	$3.00

Filed Jan. 15 1901 John D. Jordan, clerk.

44 (*Clerk's Certificate to Transcript.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing forty-three pages, contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in the case of The Southwestern Coal and Improvement Company, *et al.*, appellants, *vs.* Hyram Y. McBride, *et al.*, appellees, No. 1386, May term, 1900, as full, true and complete as the same remain on file and of record in my office.

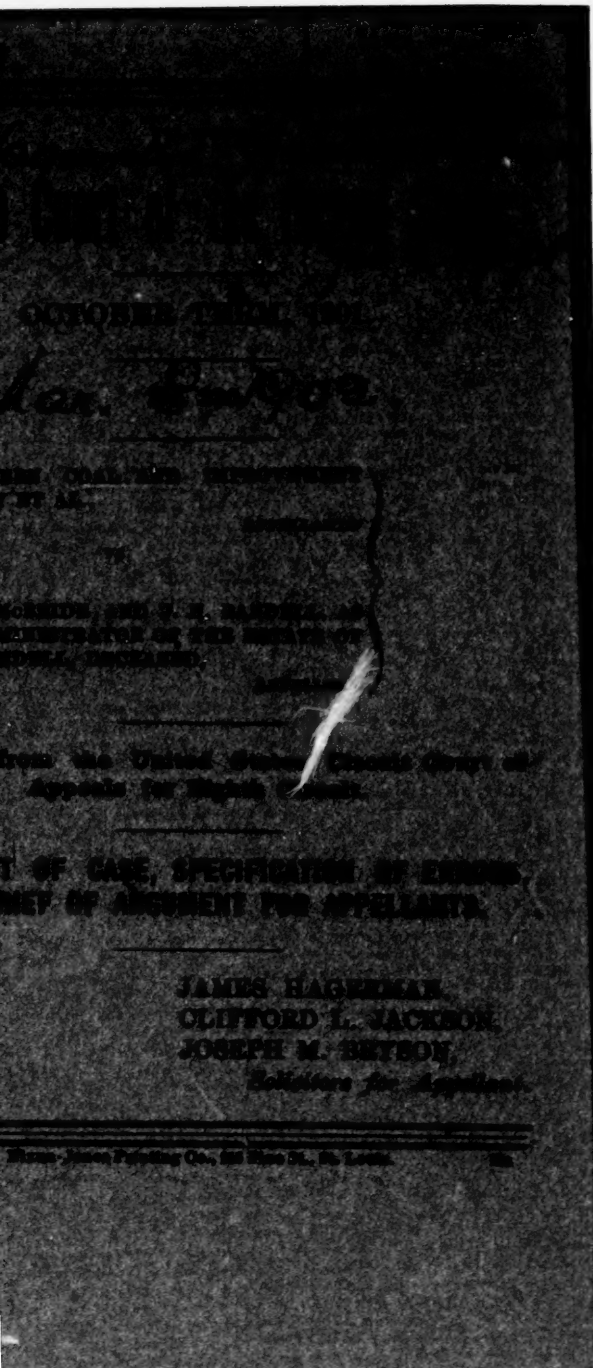
I do further certify that the original citation with the return of service thereon, is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this fifteenth day of January, A. D. 1901.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,023. U. S. C. C. of appeals, 8th circuit. Term No. 230. The Southwestern Coal & Improvement Company *et al.* appellants *vs.* Hyram Y. McBride, and J. H. Randell as administrator of the estate of G. G. Randell, deceased. Filed January 17, 1901.



OCTOBER TERM, 1941.

No. 224.

from the United States Circuit Court of Appeals for Eighth Circuit.

T OF CASE, SPECIFICATION OF ERRORS, EF OF ARGUMENT FOR APPELLANTS.

JAMES HAGERMAN,
CLIFFORD L. JACKSON,
JOSEPH M. BETSON,
Solicitors for Appellants.

Hunter-Jones Printing Co., 310 Pine St., St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No 230.

SOUTHWESTERN COAL AND IMPROVEMENT COMPANY ET AL.,
APPELLANTS,
vs.
HYRAM Y. McBRIDE AND J. H. RANDELL, AS THE ADMINISTRATOR OF THE ESTATE OF G. G. RANDELL, DECEASED,
APPELLEES.

Appealed from the United States Circuit Court of Appeals for Eighth Circuit.

STATEMENT OF CASE, SPECIFICATION OF ERRORS, AND BRIEF OF ARGUMENT FOR APPELLANTS.

STATEMENT.

This cause was instituted by complaint in equity filed in the office of the Clerk of the United States Court at Atoka in the Central District of the Indian Territory on the 14th day of May, 1898. Hyram Y. McBride, one of the appellees here, was the

plaintiff below, and The National Bank of Denison, The Southwestern Coal and Improvement Company, and J. H. Randell, as the administrator of the estate of G. G. Randell, deceased, were the defendants. The complaint, and the exhibits thereto, are found on pages two to six of the printed record, and for cause of action it alleges substantially as follows: —

That on April 6th, 1894, the appellee McBride was indebted to the said National Bank of Denison in the sum of five thousand dollars evidenced by a promissory note due six months after date, signed by Walter Colbert as surety and indorsed by G. G. Randell, deceased, of whose estate appellee J. H. Randell, as administrator, was one of the defendants below; and that said note was secured by mortgage on a certain interest in a coal claim in the Choctaw Nation, I. T., alleged to belong to McBride and other members and citizens of the Choctaw Nation, which coal claim was being operated as a coal mine by the appellant, and said appellee McBride was entitled to receive from appellant coal company about two hundred dollars per month in payment of the royalties on his interest so mortgaged by him. He further alleges that at the time of the filing of his bill the said royalties had long since discharged this indebtedness of five thousand dollars and interest, and that there remained unpaid by the coal company as royalty on his said interest $2,000 or more, and that fraud had been practiced upon him by G. G. Randell, deceased, and said National Bank of Denison by a

pretended sale of said mortgaged interest in said coal claim by said Randell to said bank, and that because of said conflicting claims of these various parties said coal company since February, 1897, withheld these royalties and said McBride asked for an accounting against all parties to the bill (Printed Record, pp. 2–6).

On November 11th, 1898, the appellant filed a general demurrer to this complaint (Printed Record, p. 7).

On March 17th, 1899, appellee J. H. Randell, as administrator, filed his separate demurrer, and also an answer denying the allegations of the bill (see Printed Record, pp. 7 to 10).

On March 23d, 1899, the demurrer filed by the appellant was overruled by the trial court (Printed Record, 11), whereupon the appellant and the said National Bank of Denison filed their separate answers, the separate answer of the appellant admitting knowledge of the alleged indebtedness of appellee McBride to the National Bank of Denison, and of the alleged mortgage, and further admitting that the royalties arising on said interest in said coal claims, and paid by the appellant to the bank upon request of appellee McBride, amounted to five thousand three hundred twenty-one dollars and eighty cents ($5,321.80), but denying any knowledge or information as to the alleged conspiracy in and about said mortgage and the transactions between the bank and Randell. The appellant further states in its answer that since March 1st, 1897, it has withheld payment of all royalties claimed to have accrued on

said mortgaged interest, because in said month of March, 1897, it first learned of the difference between the appellee McBride and the appellant's co-defendants below. Appellant then stated in detail the amount of the royalties for each month on said interest from March, 1897, to and including June 28, 1898, amounting to $2,617.29, which would have accrued according to the terms of the lease of McBride's coal claims by the coal company but alleged that on the said 28th day of June, 1898, the President of the United States approved an Act of the Congress of the United States entitled "An Act for the protection of the people of the Indian Territory, and for other purposes;" declaring all such royalty contracts void and that by the terms of section sixteen of which it was made unlawful for any person, after the passage of the Act, to claim, demand or receive for his own use, or the use of anyone else, any royalty on coal or any rents on any lands or property belonging to any one of the tribes of Indians in the Indian Territory, or for anyone to pay any individual any such royalty or rents, or any consideration therefor; that under this statute any royalties accrued to any person upon this said interest is no longer due and payable to the appellee McBride or any person claiming under him, and cannot be claimed, demanded, or received by the appellee McBride, or any other person, or paid by appellant to any such person because of said statute and the penalty provided for its violation (Printed Record, p. 13.)

The separate answer of the National Bank of Denison alleges that it has no interest in the subject-

matter of the suit and disclaims any interest in the money in the hands of the appellant claimed in the suit by the appellee McBride and the administrator of G. G. Randell, deceased (Printed Record, p. 15).

On the same date there was filed in open court a stipulation signed by Hyram Y. McBride, plaintiff below, and J. H. Randell, as administrator, one of the defendants below, setting forth that they were desirous of compromising and settling the case, that the defendant National Bank of Denison had answered disclaiming any interest in the subject-matter of the suit, that the appellant had answered that it had in its hand the sum of $2,617.29, in view of which they agreed in this stipulation that appellee McBride should take of the said sum of $2,617.29 the sum of $900.00, that the said appellee Randell take the residue, each of such sums to be in full of the demands of the respective parties (Printed Record, p. 16).

And on the same day and in open court the appellee McBride, and the said J. H. Randell, as administrator, filed a motion for a joint judgment or decree, upon the pleadings and under the stipulation filed in this cause, against the Southwestern Coal and Improvement Company in the sum of $2,617.29 (Printed Record, pp. 16–17).

This motion was by the trial court allowed and thereupon a final decree was rendered decreeing that the said Hyram Y. McBride and J. H. Randell as administrator should recover of the Southwestern Coal and Improvement Company the said sum of $2,617.29, allowing thirty days from the date of the

decree for the amount to be paid to the clerk of the trial court and ordering the clerk to distribute the same in accordance with the stipulation filed and above referred to (Printed Record, pp. 17–18).

Thereafter, the appellant, The Southwestern Coal and Improvement Company, within the time required by law, filed its application for an appeal from this judgment of the trial court, and perfected such appeal from said trial court to the United States Court of Appeals for Indian Territory (Printed Record, pp. 18–21).

Thereafter, and on January 2d, 1900, this decree was affirmed by the United States Court of Appeals for the Indian Territory, and a further decree rendered by the last named court against the Southwestern Coal and Improvement Company and also against Clarence W. Turner and Homer B. Spaulding, as sureties on its appeal bond, in the sum of $2,617.29, with interest at six per cent per annum from March 23d, 1899, and for the further sum of $261.72 being ten per cent thereon, and for costs (Printed Record, p. 24; 54 S. W. Rep. 1099).

Thereafter, and on the same day the appellants, The Southwestern Coal and Improvement Company, Clarence W. Turner, and Homer B. Spaulding, filed in the said Court of Appeals for the Indian Territory their petition for appeal from said United States Court of Appeals for the Indian Territory to the United States Circuit Court of Appeals for the Eighth Circuit, and filed therewith their assignment of errors, which said appeal was duly granted and an appeal bond filed and approved (Printed Record, pp. 25–27).

Thereafter, and on the 24th day of October, 1900, this decree was affirmed with costs by the United States Circuit Court of Appeals for the Eighth Circuit as against the Southwestern Coal and Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley (Printed Record, p. 31; 104 Fed. 1007).

Thereafter, and on December 18, 1900, the appellants, The Southwestern Coal and Improvement Company, Clarence W. Turner, Homer B. Spaulding and Cornelius E. Foley, filed in said United States Circuit Court of Appeals for the Eighth Circuit their petition for appeal from the said United States Circuit Court of Appeals for the Eighth Circuit, and filed therewith their assignment of errors, which said appeal was duly granted and an appeal bond was filed and approved (Printed Record, pp. 31–36).

SPECIFICATION OF ERRORS.

I.

The trial court erred in overruling the appellant's demurrer to the complaint in this cause, and the Court of Appeals in the Indian Territory, and the United States Circuit Court of Appeals for the Eighth Circuit, respectively, erred in not correcting this error of the trial court (Assignment of Error 1, Printed Record, p. 11).

II.

The trial court erred in sustaining the motion of Hyram Y. McBride and J. H. Randell, as administrator, for judgment against The Southwestern Coal and Improvement Company, and the Court of Appeals in the Indian Territory and the United States Circuit Court of Appeals for the Eighth Circuit, respectively, erred in not correcting this error of the trial court (Assignment of Error 2, Printed Record, p. 17).

III.

The trial court erred in entering judgment and final decree against the appellants on the pleadings in this case, and the Court of Appeals in the Indian

Territory and the United States Circuit Court of Appeals for the Eighth Circuit, respectively, erred in not correcting this error of the trial court (Assignment of Error 3, Printed Record, pp. 17–18).

IV.

The United States Court of Appeals for the Indian Territory erred in rendering judgment against Clarence W. Turner and Homer B. Spaulding, and the United States Circuit Court of Appeals for the Eighth Circuit erred in not correcting this error of the Court of Appeals for the Indian Territory (Assignment of Error 4, Printed Record, p. 24).

V.

The United States Court of Appeals for the Indian Territory erred in rendering judgment and final decree against the appellants herein in a sum over and above the amounts called for in the original decree and interest thereon at the rate of six per cent per annum, said additional sum being declared to be ten per cent upon the sum of the amount called for by the original decree and interest thereon at the rate of six per cent per annum, and the United States Circuit Court of Appeals for the Eighth Circuit erred in not correcting this error of the United States Court of Appeals for the Indian Territory (Assignment of Error 5, Printed Record, p. 24).

VI.

The United States Circuit Court of Appeals for the Eighth Circuit erred in rendering judgment and final decree against Clarence W. Turner and Cornelius E. Foley (Assigment of Error 6, Printed Record, p. 31).

BRIEF OF ARGUMENT.

This case presents but one question for the consideration of this Court, and that is, whether under the provisions of Sec. 2116 R. S. U. S. and an act of Congress, approved June 28, 1898 (30 U. S. Stat. 495), and commonly known as the Curtis Act (which contains as Section 29 thereof, the Treaty between the Choctaw and Chickasaw Indians on the one hand and the United States on the other), individual Indians or those claiming under them could, subsequent to the passage of that Act, to wit, June 28, 1898, maintain any suits of any kind against any person on account of coal royalties provided for in leases made by said individual Indians with coal operators operating coal lands in the Choctaw Nation.

Sec. 2116 R. S. provides that no Indian tribe or nation can except by treaty or convention with the United States grant any lease or interest in their lands to any one.

The parts of the above mentioned Curtis Act and Treaty affecting coal leases and the questions at issue in this case are as follows: —

> "All agreements heretofore made by any person or
> "corporation with any member or members of the
> "Choctaw or Chickasaw Nations, the object of which
> "was to obtain such member or members' permission

"to operate coal or asphalt, *are hereby declared void;*
"provided, that nothing herein contained shall impair
"the rights of any holder or owner of a leasehold
"interest in any oil, coal rights, asphalt or min-
"eral which have been assented to by act of Congress,
"but all such interests shall continue unimpaired
"hereby and shall be assured by new leases from
"such trustees of coal or asphalt claims described
"therein, by application to the trustees within six
"months after the ratification of this Agree-
"ment. * * * *No royalty shall be paid except*
"into the United States Treasury as herein provided."

"It is agreed that all the coal and asphalt within
"the limits of the Choctaw and Chickasaw Nations
"shall *remain and be* the common property of the
"members of the Choctaw and Chickasaw Tribes
"(freemen excepted), so that each and every member
"shall have an equal and undivided interest in the
"whole: and no patent provided for in this Agree-
"ment shall convey any title thereto."

"All coal and asphalt mines in the two Nations
"whether now developed, or to be hereafter devel-
"oped, shall be operated and the royalties therefrom
"paid into the Treasury of the United States and shall
"be drawn therefrom under such rules and regula-
"tions as shall be prescribed by the Secretary of the
"Interior."

Section 16 and 18 of the Curtis Act also bear upon these same matters and are as follows: —

"Section 16. *That it shall be unlawful for any*
"person after the passage of this Act, except as
"hereinafter provided, to claim, demand, or receive,
"for his own use or for the use of any one else, any

"*royalty on oil, coal, asphalt or other mineral,* * * *
"*or for anyone to pay to any individual, any such*
"*royalty or rents, or any consideration therefor what-*
"*soever, and all royalties and rents hereafter payable*
"*to the tribe shall be paid under such rules and regu-*
"*lations as may be prescribed by the Secretary of the*
"*Interior, into the Treasury of the United States, to*
"*the credit of the tribe to which they belong.*"

"Section 18. That any person convicted of violat-
"ing any of the provisions of sections sixteen and
"seventeen of this act shall be deemed guilty of a
"misdemeanor and punished by a fine of not less than
"one hundred dollars, and shall stand committed until
"such fine and costs are paid (such commitment not
"to exceed one day for every two dollars of said fine
"and costs), and shall forfeit possession of any prop-
"erty in question, and each day on which such offense
"is committed or continues to exist shall be deemed a
"separate offense. And the United States District
"Attorneys in said Territory are required to see that
"the provisions of said sections are strictly enforced
"and they shall at once proceed to dispossess all per-
"sons of such excessive holdings of lands and to
"prosecute them for so unlawfully holding the same."

Section 29 reads: —

"That on and after the passage of this act the laws
"of the various tribes or nations of the Indians shall
"not be enforced at law or in equity by the courts of
"the United States in the Indian Territory."

We will not at length here discuss the question of the validity or the invalidity of these coal leases entered into with individual Choctaw Indians by coal

operators under which coal was mined in the Choctaw Nation prior to the passage of the Curtis Act. But we invite the attention of the court to the rulings of different departments of the executive branch of the Federal government on different occasions, and notably to the opinion of the Attorney-General of the United States rendered under date of October 14, 1896, and found in volume 18, page 486, of the opinions of Attorneys-General, in passing upon certain leases between the Osage Coal & Mining Company on the one hand and certain citizens of the Choctaw Nation on the other wherein he held all such leases void for the want of Congressional authority to make them.

Even though the coal leases and contracts were not void under Sec. 2116 R. S. still Congress has ample power to pass laws impairing the obligations of contracts made anywhere in the United States, and especially is this true as to contracts made in the Indian Territory, a country especially under the exclusive jurisdiction of the United States and subject to the laws of the Congress of the United States, and as to contracts to which Indian citizens are parties, who are wards of the Federal government and whose every action is subject to the control of the Federal government and the laws made by Congress, and as to contracts concerning tribal property of the Indians in which all have a common right and over which Congress has absolute authority.

That Congress can exercise such power over contracts in general is well shown in the following authorities: —

Legal Tender Cases, 12 Wallace, 457.

"Congress may pass laws impairing the obligations of contracts which shall be the supreme law of the land."

Ordranaux's Constitutional Legislation, p. 279.

"There is nothing in the Constitution which prohibits Congress from passing laws impairing the obligations of contracts."

2 Beach on Contracts, Section 1633, page 2117.

"The Federal constitution provides that no State shall pass any law impairing the obligations of contracts. * * * This prohibition, it will be noticed, is directed only against the States, and there is no other clause in the constitution laying a like inhibition upon Congress. It follows, therefore, that if Congress should pass a law, falling within the scope of its jurisdiction, and not obnoxious to any other prohibition of the constitution, the courts would be obliged to sustain it, notwithstanding its effect might be to impair the obligation of existing public or private contracts. The injustice of such an act would not be sufficient ground for adjudging it unconstitutional. And, in fact, such consequences have attended several of the acts of Congress, such as the legal tender law and the various statutes of bankruptcy, but their constitutionality has not been questioned on that ground."

Black's Constitutional Law, page 522, section 188.

"It is no answer to say that it (the right of Congress) interferes with the validity of contracts, for no provision of the constitution prohibits Congress

from doing this as it does the States, and where the question of the power of Congress arises as in the legal tender cases and in the bankruptcy cases, it does not depend on the incidental fact of its exercise upon contracts, but on the existence of the power itself."

Mitchell *v.* Clark, 110 U. S. 633.

"The Indian Tribes, especially the Five Tribes, are subject to the authority of Congress."

Cherokee Tobacco Case, 11 Wallace, 616; 78 U. S. 227.

The right of the individual Indian citizen to claim coal lands within the limits of the Choctaw Nation is based upon a provision found in the Choctaw Constitution. The provision is as follows: —

"Any citizen of this Nation who may find any mine or mines, or mineral water, shall have exclusive right and privilege to work the same so long as he may choose, within one mile in any direction from his works or improvements; provided, however, he does not interfere with the rights of the former settler."

Choctaw Statutes, 1894, page 24.

It is submitted however that this provision of the Choctaw Constitution is void by reason of Sec. 2116 of R. S. U. S., which provides that "*No purchase, grant, lease or other conveyance of lands or of any title or claim thereto from any Indian Nation or Tribe of Indians shall be of any validity in law or equity unless the same be made by treaty or conven-*

tion entered into pursuant to the Constitution," and because further the Chickasaw Nation, which has a joint interest in said coal lands, never consented to said provision of the Choctaw Constitution.

Congress had full authority to declare the contracts in question void though authorized when made. It did not undertake to do so without an agreement with the Choctaw and Chickasaw Indians, as contained in the above quoted treaty.

> "The unlimited power of Congress to deal with the Indians and their property and commercial transactions so long as they keep up their tribal organization, may be conceded."
>
> Thomas *v.* Gay, 169 U. S. 264.

In the case of the Choctaw Nation v. United States, 119 U. S., page 1, the Supreme Court said: —

> "The Choctaw Nation falls within the description in the terms of our Constitution, not of an independent State or Sovereign Nation, but of an Indian tribe. * * * These Indian Tribes are the wards of the Nation; dependent largely for their daily food; dependent for their political rights."
>
> See also U. S. *v.* Kagama, 118 U. S. 375.

In the case of the Cherokee Nation v. The Southern Railway Company, 135 U. S. 641, the Supreme Court of the United States, after review-

ing the decisions of that Court, and various treaties with the Cherokee Nation, uses this language: —

> "But neither this, nor any previous treaties, evinces any intention upon the part of the government to discharge them (the Indians) from their conditions of pupilage or dependency, and constitute them a separate, independent sovereign people, with no superior within its limits. * * * We think it too firmly and clearly established to admit of dispute, that the Indian Tribes residing within the territorial limits of the United States are subject to their authority. * * * The lands of the Cherokee Nation, like lands held by private owners within the geographical limits of the United States are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it, provided only, that they are not taken without just compensation being made to the owner."

In the case of the Choctaw Nation v. United States, 119 U. S. 1, the Supreme Court said: —

> "In reviewing the controversy between the parties presented by this record, it is important and necessary to consider and dispose of some preliminary questions. The first relates to the character of the parties, and the nature of the relation they sustain to each other. The United States is a sovereign nation, not suable in any court except by its own consent, and upon such terms and conditions as may accompany that consent, and is not subject to any municipal law. Its government is limited only by its own constitution, and the nation is subject to no law but the law of Nations.

> On the other hand, the Choctaw Nation falls within the description of the terms of the constitution, not of an independent State or Sovereign Nation, but of an Indian Tribe. As such it stands in a peculiar relation to the United States. It was capable under the terms of the constitution, of entering into treaty relations with the government of the United States, though, from the nature of the case, subject to the power and authority of the United States when Congress should choose or determine to exert its legislative power."

The Courts have uniformly held that Congress has supreme authority over the ordinary territories within the limits of the United States.

> "The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. In the exercise of this sovereign dominion, they are represented by the government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the constitution or are necessarily implied in its terms."

Murphy *v.* Ramsey, 114 U. S. 1.

The language above quoted is approved in the case of the late Corporation of Latter Day Saints v. the United States, 136 U. S. 1. The Corporation of Latter Day Saints was incorporated under an ordinance of the so-called State of Deseret, in 1851, which was validated by an Act of the Territorial Legislative Assembly of Utah passed about

six months later, and the Supreme Court of the United States decided that the Corporation had a legal existence under this charter and says: —

> "But it is too plain for argument, that this charter or enactment was subject to revocation and repeal by Congress whenever it should see fit to exercise its power for that purpose. Like any other act of the Territorial Legislature, it was subject to this condition."

This opinion further held that Congress had full and perfect right to repeal the charter of this corporation, and abrogate its corporate existence, and this in spite of the fact that its charter authorized it to receive, hold, buy, sell, manage and control real and personal property. It is true that this corporation was engaged in the dissemination of the doctrine of polygamy, but this question did not seem to enter into the question of the power of Congress to annul and render void the act of the Territorial Legislature, incorporating the Latter Day Saints. The power of Congress to organize Territorial governments and make laws for their inhabitants arises, not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the territory and other property of the United States as from the ownership of the country in which the Territories are, and the right of exclusive sovereignty must exist in the national government, and can be found nowhere else.

"It is no answer to say that it (the right of Congress) interferes with the validity of contracts, for no provision of the Constitution prohibits Congress from doing this as it does the States, and where the question of the power of Congress arises, as in the legal tender cases and in the bankruptcy cases, it does not depend on the incidental fact of its exercise upon contracts, but on the existence of the power itself."

Mitchell *v.* Clark, 110 U. S. 633.

See the Salt Bounty Cases, entitled, Saginaw Salt Manufacturing Company v. The City of East Saginaw and Charles B. Deland.

"All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. Territories are but political subdivisions of the outlying dominion of the United States. They bear much the same relation to the general Government that counties do to the States, and Congress may legislate for them as States do for the respective municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local Government. It is obligatory on and binds the Territorial authorities, but Congress is supreme, and for the purposes of this department of its governmental authority, has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution. In the organic Act of Dakota, there was no express reservation of power in Congress to Amend the Acts of the Territorial Legislature, but none was necessary. Such a power is an incident of sovereignty,

and continues until granted away. Congress may not only abrogate laws of Territorial Legislatures, but it may itself legislate directly for the local Government. It may make a void act of the Territorial Legislature valid, and a valid Act void. In other words, it has full and complete legislative authority of the Territories and all the departments of the Territorial Governments. It may do for the Territories what the people of the United States under the Constitution may do for the State."

First National Bank of Brunswick *v.* County of Yankton, 101 U. S. 129.

This doctrine is reiterated in the case of Farrell v. United States, decided by the United States Circuit Court of Appeals for the Eighth Circuit September 30, 1901, and found in 110 Fed. Rep. 942. The court discusses this question at great length but the following brief quotation will support the doctrine herein contended for: —

"The Constitution provides that Congress shall have the power 'to regulate commerce * * * with the Indian tribes.' Article 1, Section 8. This grant of authority includes the power to regulate intercourse with the individual members of such tribes."

The provision of the Choctaw Constitution under which a recovery is sought in this case gave the appellees an advantage over their brother Indians that Congress did not authorize, and the Curtis Act declared the contracts void and unenforceable.

> "A party has no vested rights in a rule of law which would give him an inequitable advantage over another; and such rule may therefore be repealed, and the advantage thereby taken away."
>
> 2 Story on the Constitution, page 703, Section 1957.

This land was deeded to the Indian nations for the equal benefit and advantage of their citizens and Congress never lost its right to declare void any act of the nations which rendered ineffectual this controlling provision of the grant.

The United States Court of Appeals for the Indian Territory based its opinion in the case at bar, and which is found in 54 S. W. Rep. 1099, upon the opinion of the same court in the case of the Atoka Coal and Mining Company v. Adams, 53 S. W. Rep. 539, in which the same general questions were passed upon that are involved in the case at bar. The Indian Territory Court of Appeals in the opinion in the Adams case, *supra*, after quoting sections sixteen and eighteen of the Curtis Act, and that part of the Choctaw-Chickasaw Treaty embodied in the Curtis Act, which are quoted in the brief, held that the language quoted therefrom seemed broad enough to prohibit the collection of any royalties that might otherwise have been due to individuals on the date of the approval of the Curtis Act, to wit, June 28, 1898, and this opinion supports every contention made by the appellants in this brief but the opinion goes further and holds that the Curtis Act should not be construed as retroac-

tive though Congress could pass a valid retroactive statute. This opinion of the Indian Territory Court of Appeals seems somewhat inconsistent. It is clearly right in holding that the language of the Curtis Act and the treaty embodied therein are strong enough to strike down any pretended claim that the individual Indians had to this coal royalty and strong enough to make it a crime for either the individual Indian to demand or claim such royalty as well as a crime for the coal operators to recognize such claim or demand of the individual Indian, and to provide a penalty against the individual Indian who made such a claim or demand and against the coal operator who recognized the same.

It is clearly wrong when it says that Congress did not have the power to enact this legislation. The general provisions of this Curtis act have been sustained in the exhaustive opinion by this court in the Citizenship Cases found in 174 U. S. 445.

In that case it was said: —

> "We are of opinion that the constitutionality of these acts (various acts affecting the power of the Dawes Commission in the Indian Territory and especially referring to the Curtis Act) in respect of the determination of citizenship, cannot be successfully assailed on the ground of the impairment or destruction of vested rights. The lands and moneys of these tribes are public lands and moneys, and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms."

It must be borne in mind that not alone were these claims of these individual Indians stricken down by an Act of Congress, but also by a solemn treaty between the United States on the one hand and these individual Indians on the other, and upon which each and every Indian was given an opportunity to express his individual opinion at the polls, and it is therefore stronger than an arbitrary Act of Congress made without the consent of these Indians.

If these individual Indians have a right to claim the royalty at issue in this case they have a right to claim succeeding royalties, for if the Curtis Act and Treaty are void as to any royalty it must be void as to all. There is no principle of law which will sustain the law as to royalty to accrue in the future and render it void as to royalty already accrued. The individual Indians can have no greater right to accrued royalty than to royalty to accrue. He claims both under one and the same contract. The parties to these contracts must be held to have had knowledge of the right and power of Congress to strike down and abrogate these contracts at any time. They were not *contracts* in the full sense of that word, but were arrangements permitted to the parties at the will of Congress — a mere license subject to be withdrawn or canceled at any time. How can the citizen's *right* to accrued royalty be a vested one any more than his *right* to royalty to accrue? Suppose millions of bushels of coal at the date of the act had been mined under the provisions of these contracts, but was still in bins at the mines, can it be claimed that as to such mined coal the rights of

the parties would be any different than to the coal in place? The mined coal was taken out on the faith of the contracts. The coal in place was discovered, mines developed, work done, machinery provided and capital invested on the faith of the contracts. What principle of law, we ask again, will fix the right of the parties to the coal mined and not to the coal in place?

The Court of Appeals for the Indian Territory rested its decision of this case solely upon its opinion in the case of Atoka Coal & Mining Co. v. Adams, 53 S. W. 539, the decision of that court in the case at bar being merely a memorandum opinion found in 54 S. W. 1099.

The United States Circuit Court of Appeals for the Eighth Circuit followed a similar course, the opinion in the case of Atoka Coal & Mining Co. v. Adams being found in 104 Fed. Rep. 471, and in the case at bar in 104 Fed. Rep. 1007.

A careful consideration of the opinion of the Court of Appeals of the Indian Territory in the Adams case shows that that court was clearly of the opinion that the language of the "Curtis Act" read literally, was "broad enough" to defeat a recovery but the court felt justified in so construing the act as not to defeat a recovery, basing its resort to such construction on the supposed intention on the part of Congress to only cancel the contracts as to future transactions and leave them intact as to past transactions. It was not decided that there was any ambiguity in the language of the act such as justified an interpretation of the act dif-

ferent from the plain meaning of the language used but it was simply held that retrospective laws being abhorrent to the principles of universal right and justice and condemned by the Federal Constitution and text-writers, the court should so construe the law, as not to prevent a recovery of accrued individual royalty.

It is hardly necessary for us to mention the fact that the clause in the Federal Constitution inhibiting *ex post facto* laws has no relation whatever to the case at bar. This is not a criminal proceeding.

The United States Circuit Court of Appeals for the Eighth Circuit, in the Adams case, which was a *friendly suit by petition of interpleader filed by the coal company*, declined to consider the extent of the power of Congress to legislate for the Indian Territory and the people therein, or to inquire whether Congress could in any case impair the obligation of contracts, but held that the "Curtis Act" did not affect individual royalties which accrued prior to the adoption of the act, and in its opinion uses the following language: —

> "While, in the absence of constitutional inhibition, the legislature may give to some of its acts a retrospective operation, the intention to do so must be clearly expressed, or necessarily implied from what is expressed; and, assuming the legislature to possess the power, its act will not be construed to impair or destroy a vested right under a valid contract unless it is so framed as to preclude any other interpretation. If Congress had intended to deprive lessors of the royalties due and owing to them at the date of the

act, it would have used appropriate language to express that intention, and would necessarily have made some provision for the disposition of such royalties. But it is clear from the language of the act that it does not deal with royalties already paid, or already due and owing to lessors under leases for coal already mined."

The Circuit Court of Appeals felt justified in departing from the plainly expressed will of Congress, as expressed in this act, to determine by some theory of its own the intention of Congress. That court construes this "Curtis Act" in the face of its language which it is submitted is too plain to admit of the construction given it. In the "Curtis Act," and in the Choctaw and Chickasaw Agreement as contained therein, all agreements such as the one here sued on are by the act "declared void," and it is further declared that all coal shall "remain and be" the common property of the nations, and it is made unlawful after the passage of the act "except as hereinafter provided" to claim or receive or to pay "any individual any such royalty" and "all royalty and rents hereafter payable to the tribe shall be paid to the treasury of the United States to the credit of the tribe," and then follows the sweeping provision that none of the United States courts in the Territory shall enforce any of the laws of the tribes "at law or in equity." This last provision though controlling was not noticed by the court in the Adams case. Let it be noted that the individual contracts are void. What does that signify? Does that mean

that they are valid and subsisting to a given point and will sustain an action to recover unpaid sums of money which have accrued as by their terms? Certainly not. If void they will not support an action even in piecemeal. The act does not say the contracts are canceled as of the date of its passage but they are simply declared void. Then follows the provision that the coal shall "remain and be" the common property of the Nations. Does that mean the coal covered by these contracts was to be the property of the individual citizen up to the passage of the act and of the Nation from that time forward? It is a controlling canon of statutory construction that courts are not justified in resorting to construction when the language of the act is plain and unambiguous. Nothing is left to construction. The act follows by making it a criminal offense for any one to claim or pay any individual royalty "except as hereinafter provided;" not even the Federal government may claim or receive individual royalty because the act says the individual agreements were void. The Federal government is only to receive royalties and rents payable to the tribes. The act did not give to the tribes a vested right to the royalty reserved to them in these individual contracts—neither to royalty accrued or to accrue. The contracts were struck down in toto.

These Courts of Appeals have read into the act an exception in favor of individuals not contained in or hinted at in the act but on the contrary expressly excluded.

The law of the Choctaw and Chickasaw Nations (under which the individual contracts were made) are declared unenforceable in the courts and the contracts themselves declared void.

It is elementary that a void contract will not support a recovery of the purchase price though the contract be fully performed on the other side. In such cases the courts leave the parties where it finds them. As to the unpaid sum the contract is not executed but executory. If it had been paid no recovery back could be had and *vice versa*.

(Central Trans. Co. v. Pullman, 139 U. S. 59; St. Louis Ry. Co. v. Terre Haute R. R., 145 U. S.; Railroad v. Thomas, 101 U. S. 86.) So, even though the individual contracts became void only by reason of the act of June 28, 1898, and not from some inherent vice, and only from that date forward, still there is now no contract on which a recovery can be had. So far as the unpaid royalties are concerned the contracts are executory and the operation of the act of Congress on the executory part is not *retroactive* in any sense.

The cases cited by the Indian Territory Court of Appeals have no application. The repeal of an existing statute enacted by competent and supreme legislative authority can bear no possible resemblance to an act declaring a so-called contract, not founded on any act of Congress but prohibited by an act of Congress, void. In the one case the legislature treats as it must do the repealed act as a valid act until repealed, as something having life and requiring a further act to put an end to its

existence; while in the other case the contract is declared never to have existed. The repealed act was law until repealed but a void thing never was.

The existence of these individual contracts, probably as much if not more than anything else, developed the sentiment in the tribes which resulted in the treaties with the Dawes Commission. The Indian citizens saw large areas of coal lands preempted by the favored few upon which individual royalty was collected to the detriment of the Nations at large. While the territory was deeded to them in common the citizens at large derived no profit from this great industry. It was the same grievance which led to the declaration against individual Indians fencing large tracts of grazing lands. The Indians in negotiating their treaties asserted the invalidity of these contracts and Congress not only prohibited them but declared them void and prohibited the courts from enforcing any tribal law on which they might be based.

Notwithstanding all these declarations against the validity of these contracts, notwithstanding their invalidity was the chief plank of the platform of the full-blood Indians in their conventions, notwithstanding the Attorney-General has declared they are void, and notwithstanding the solemn acts of Congress prohibiting and declaring them void and prohibiting the courts of the Indian Territory from enforcing the Indian law on which they are based, these Courts of Appeals found a way to hold them void only from and after June 28, 1898, and consequently held them valid up to that time.

If they were valid up to that time then Congress expressly impaired the obligation of the contracts. Is it not more reasonable to hold that Congress did not mean to exercise that high but undoubted power, but simply add the weight of its opinion as well as its legislative power against the validity of these contracts by declaring the contracts, what they had always been, void?

Respectfully submitted,

JAMES HAGERMAN,
CLIFFORD L. JACKSON,
JOSEPH M. BRYSON,

Solicitors for Appellants.

Supreme Court of the United States.

No. 230.—October Term, 1901.

The Southwestern Coal and Improvement Company et al., Appellants, *vs.* Hyram Y. McBride et al.	Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[May 19, 1902.]

This litigation was begun in the United States Court for the Indian Territory, Central Judicial District, sitting at Atoka, by the filing of a bill in equity on behalf of Hyram Y. McBride, a citizen of the Choctaw Nation. The defendants named in the bill were the National Bank of Denison, the Southwestern Coal and Improvement Company (hereafter referred to as the Coal Company) and J. A. Randell, as administrator of the estate of G. G. Randell, deceased. The Coal Company is an appellant in this court, while McBride and Randell are the appellees. It was averred in the bill that on April 6, 1894, the complainant (McBride) was the owner of a three twenty-seconds share in a certain coal or mining interest situated in the town of Coalgate, Indian Territory, which coal claim was being operated, under royalty contracts, by the Coal Company; that, to secure an indebtedness due by the complainant to the National Bank of Denison, complainant had executed and delivered a mortgage upon his aforesaid share; and that, under the assumed authority of a power of sale contained in the mortgage and pursuant to a combination between the bank and one G. G. Randell, a purported sale of said share of complainant was made to said Randell, but that said pretended sale, for various stated reasons, was illegal and void. It was further averred that from the time of said pretended sale the Coal Company had failed to make payments of royalties due upon said share of complainant, and was liable to account therefor. The prayer of the bill was, in substance, that the sale in question be declared a nullity and that the various defendants account to complainant in respect to the royalties received and retained.

The bank filed its answer, and therein disclaimed having any interest in the unpaid royalties claimed by complainant and J. H. Randell, as administrator of G. G. Randell. In its answer the Coal Company, among other things unnecessary to be stated, admitted that it had withheld payments from March 1, 1897, of royalties on the coal mining share referred to in the complaint, and averred that the amount of said unpaid royalties aggregated $2,617.29. The Coal Company also further specifically pleaded in its answer as follows:

"Defendant Coal Company further states that on the 28th day of June, 1898, the President of the United States approved an act entitled 'An act for the protection of the people of the Indian Territory, and for other

purposes,' and which said act of Congress is commonly known as the 'Curtis bill,' and by section sixteen of said act it was provided that it should be unlawful for any person, after the passage of said act, except as otherwise provided therein, to claim, demand or receive for his own use, or the use of any one else, any royalty on coal, or any rents on any lands or property belonging to any one of said tribes or nations in said territory, or for any one to pay to any individual any such royalty or rents or any consideration therefor, whatsoever.

"And that by virtue of the provisions of said act of Congress hereinabove referred to, on and after the 28th day of June, 1898, no royalties accrued to any person upon this said interest claimed by the plaintiff in said mines; and that by virtue of the provisions of said act of Congress, hereinabove referred to, the royalty which accrued upon said interest so claimed by the plaintiff in said mines and which said Coal Company had not paid over to said defendant bank in accordance with plaintiff's instructions, is no longer due and payable to the said plaintiff or any person claiming under him, and cannot be claimed, demanded or received by the plaintiff, or any other person; and that by virtue of section eighteen of said act of Congress, hereinabove referred to, any person claiming, demanding or receiving any of the royalties which the plaintiff claims accrued upon the interest claimed by him in said coal mines, becomes guilty of a misdemeanor, which is punishable by a fine of not less than one hundred dollars ($100.00,) and is liable to forfeit possession of the property in question."

A written stipulation was thereafter entered into between the complainant and the defendant Randell, administrator, wherein it was agreed that the complainant was entitled to $900 of the sum admitted by the Coal Company to be unpaid, and that the said defendant administrator was entitled to the remainder, or the sum of $1,717.29. Upon the pleadings in the cause and the stipulation referred to, a motion for judgment against the Coal Company for $2,617.29 was filed on behalf of the complainant and said defendant administrator. The motion was granted, and a judgment was entered accordingly. An appeal was taken to the Court of Appeals for the Indian Territory, and that court affirmed the judgment. (54 Southwestern Rep. 1099.) The judgment of affirmance was in favor of McBride and Randell, administrator, against the Coal Company and the sureties on its supersedeas bond (Clarence W. Turner and Homer B. Spaulding,) for the amount of the original judgment, with interest and costs. An appeal was then prosecuted by the Coal Company, and Turner and Spaulding to the United States Circuit Court of Appeals for the Eighth Circuit. That court affirmed the judgments, (104 Fed. Rep. 1007,) and the cause was then appealed to this court.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The sole question presented for the consideration of the courts below and necessary to be passed upon by this court was, and is, Did the act of

Congress, approved June 28, 1898, known as the Curtis Act, operate to deprive the lessors of coal mines in the Choctaw Nation of the royalties due and owing to them for coal mined under valid leases prior to the date named? The question necessarily requires a construction of section 16 of the act, which reads as follows:

"SEC. 16. That it shall be unlawful for any person, after the passage of this act, except as hereinafter provided, to claim, demand or receive, for his own use or for the use of any one else, any royalty on oil, coal, asphalt or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to any one of said tribes or nations in said Territory, or for any one to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong: *Provided*, That where any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him: *Provided, further*, That nothing herein contained shall impair the rights of any member of a tribe to dispose of any timber contained on his, her or their allotment."

A particular consideration of section 18 of the act, referred to in the answer of the Coal Company, is not required, as the section merely provided for the punishment of any person convicted for violating any of the provisions of sections 16 and 17 of the act.

On the part of the appellants it is contended that the section in question is retrospective in its operation and inhibits the collection of royalties due and owing at the time of the approval of the Curtis Act, even though such royalties, had the statute in question not been passed, might lawfully have been collected by the lessors to whom it had been agreed the same should be paid. The Circuit Court of Appeals, however, sustained the contention that the provisions of the section in question had only a prospective operation, and in so doing we think no error was committed. We adopt the reasoning of the court below on the subject. The court said (104 Fed. Rep. 473):

"The function of the legislature is to prescribe rules to operate upon the actions and rights of citizens in the future. While, in the absence of a constitutional inhibition, the legislature may give to some of its acts a retrospective operation, the intention to do so must be clearly expressed, or necessarily implied from what is expressed; and, assuming the legislature to possess the power, its act will not be construed to impair or destroy a vested right under a valid contract unless it is so framed as to preclude any other interpretation. If Congress had intended to deprive lessors of the royalties due and owing to them at the date of the act it would have used appropriate language to express that intention, and would necessarily

have made some provision for the disposition of such royalties. But it is clear from the language of the act that it does not deal with royalties already paid, or already due and owing to lessors under leases for coal already mined. . . . Congress, by the Curtis Act, neither attempted nor intended to interfere with the rights of lessors to royalties due them under their leases at the date of the passage of the act."

It is asserted in the brief of counsel for the appellants that the contract under which the royalties in question became due was made under authority of a tribal law of the Choctaw Nation, and we are asked to assume that the authority to make the lease in question was not either directly or indirectly conferred by Congress, and that in consequence the contract was of no validity by reason of section 2116 of the Revised Statutes, wherein, among other things, it is declared that "no purchase, grant lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." We do not decide this contention, in view of the fact that it does not appear to have been raised or considered in the courts below, and it is besides entirely inconsistent with the answer of the Coal Company, wherein it is substantially conceded that the lease in question was valid in its inception, and that the unpaid royalties would have been due and owing to the lessor or his assigns, but for the effect of the alleged nullifying provisions of section 16 of the Curtis Act.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.